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Monday, October 19, 1987

Presidential Documents

Title 3—

The President

Proclamation 5729 of October 15, 1987

National Safety Belt Use Day, 1987

By the President of the United States of America

A Proclamation

Studies indicate that 40 to 55 percent of all passenger car occupant fatalities and serious injuries could be eliminated if people would use the safety belts already installed in their vehicles. Each year, 10,000 people could be saved from death if everyone would use safety belts every trip. In 1986, for instance, safety belts saved the lives of 2,200 front seat passengers. Thousands of lives and millions of dollars in medical and insurance expenses have been saved by "buckling up."

The tremendous benefits of adult safety belt and child restraint use are now widely recognized throughout the United States. Twenty-nine States and the District of Columbia have safety belt use laws. These laws, in conjunction with public education, have resulted in a safety belt usage increase among car drivers from 11 percent in 1982 to 42 percent in the first half of 1987.

Although great progress has been made in the recognition of the advantages of increased safety belt use, less than one half of all Americans use their safety belts. Each of us can help increase this number by remembering that the use of safety belts offers protection in a crash and by increasing our willingness to communicate that fact to our loved ones who fail to wear them. We must not wait until personal tragedy strikes to become advocates of safety belt use.

Child passenger protection laws requiring the use of child safety seats and belt systems are in place in all 50 States and the District of Columbia. Correctly used, child safety seats are highly effective, reducing the risk of fatality by about 70 percent and serious injury by about 67 percent. Among children under four, these seats saved about 200 lives in 1986.

Still, the effectiveness of child safety seats can be greatly impaired when they are not installed or used properly. With 100 percent correct use, these seats could save about 500 lives a year. Parents should follow the manufacturer's instructions carefully and inspect the seat regularly to make sure it is installed correctly and used on every trip. With added concern for the proper installation and consistent use of these safety devices, we can eliminate needless and preventable tragedies and save hundreds more of our children.

In order to encourage the people of the United States to wear safety belts, to have their children use child safety seats, and to encourage safety and law enforcement agencies and others to promote greater usage of these essential safety devices, the Congress, by H.J. Res. 338, has designated October 15, 1987, as "National Safety Belt Use Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 15, 1987, as National Safety Belt Use Day. I call upon the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, the Mayor of the District of Columbia, and the people of the United States to observe this day with appropriate ceremonies and activities and to reaffirm our commitment to encouraging universal seat belt use.

IN WITNESS WHEREOF, I have hereunto set my hand this 15 day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-24292
Filed 10-16-87; 10:59 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5730 of October 15, 1987

White Cane Safety Day, 1987

By the President of the United States of America

A Proclamation

The white cane is a device that helps blind citizens in their daily lives and reminds all Americans of visually handicapped people's desire and increasing ability to live independently. The cane helps its bearers negotiate physical obstacles and thus enables the sightless to travel and work more easily in the public environment. During our yearly observance of White Cane Safety Day, we pause to recall our need to eliminate barriers of misinformation and misunderstanding as well—to remember the capabilities and accomplishments of sightless people and to respond to their particular needs with sensitivity, friendship, and respect.

In acknowledgment of the white cane and all it symbolizes, the Congress, by joint resolution approved October 6, 1964, has authorized the President to designate October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 15, 1987, as White Cane Safety Day. I urge all Americans to show respect for those who carry the white cane and to honor their many achievements.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-24293
Filed 10-16-87; 11:00 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12611 of October 15, 1987

Delegating Authority To Implement Assistance for Central American Democracies and the Nicaraguan Democratic Resistance

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Military Construction Appropriations Act, 1987, enacted by section 101(k) of the Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987 (Public Laws 99–500 and 99–591), the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), the Joint Resolution Making Continuing Appropriations for the Fiscal Year 1988 (Public Law 100–120), and section 301 of title 3 of the United States Code, and in order to delegate certain functions concerning the use of funds, it is hereby ordered as follows:

Section 1. Executive Order No. 12570 of October 24, 1986, is amended by adding the following to the end of Section 2(b):

"and funds provided in the Joint Resolution Making Continuing Appropriations for the Fiscal Year 1988 (Public Law 100–120).".

Sec. 2. This Order shall be effective immediately.

Ronald Reagan

THE WHITE HOUSE,
October 15, 1987.

[FR Doc. 87–24294
Filed 10–16–87; 11:01 am]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 52, No. 201
Monday, October 19, 1987

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 583]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 583 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 267,500 cartons during the period October 18 through October 24, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 583 (§ 910.883) is effective for the period October 18 through October 24, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601 through 674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on October 13, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a unanimous vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good for large sized lemons, fair for smaller sizes.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreement and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.883 is added to read as follows:

§ 910.883 Lemon regulation 583.

The quantity of lemons grown in California and Arizona which may be handled during the period October 18 through October 24, 1987, is established at 267,500 cartons.

Dated: October 14, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–24146 Filed 10–16–87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-125-AD; Amdt. 39-5738]

Airworthiness Directive; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This revises an existing airworthiness directive (AD), applicable to certain CASA Model C–212 series airplanes, which requires replacement of the power quadrant cover with a cover incorporating slot protection. This action is necessary because errors have been discovered in the service bulletin referenced in the existing AD which describes the modification to the power quadrant cover. This amendment requires that the modification be made in accordance to Revision 1A of the service bulletin and extends the compliance time

EFFECTIVE DATE: October 14, 1987.

ADDRESSES: The applicable service information may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA issued AD 87-05-05, Amendment 39-5562 (52 FR 4766; February 17, 1987), to require modification of the power control quadrant cover, to prevent jamming of the power controls by objects falling in the open slots, in accordance with CASA Service Bulletin 212-76-05, dated October 23, 1985. Operators were required to install the modification within eight months after AD's effective date of March 25, 1987.

Since issuance of the AD, it has been discovered that the applicable CASA service bulletin contained errors in certain critical instructions. During the development and coordination of AD 87-05-05, errors in the original service bulletin were not identified. The manufacturer has issued CASA Service Bulletin 212-76-05, Revision 1A, which contains corrected instructions necessary for proper installation of the protection for the control box upper cover. The Spanish Direccíon General de Aviacíon Civil (DGAC) officially classified Revision 1A as mandatory on July 20, 1987.

This airplane model is manufactured in Spain and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design, the FAA has determined that it is necessary to revise AD 87-05-05 to require that the modification be made in accordance with Revision 1A of CASA Service Bulletin 212-76-05, dated August 7, 1986, and extend the compliance time to February 28, 1988.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; Feburuary 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) Revised Pub. L. 97-449, (January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 87-05-05, Amendment 39-5562 (52 FR 4766; February 17, 1987), to read as follows:

CASA: Applies to Model C-212 series airplanes, serial numbers as listed in CASA Service Bulletin 212-76-05, Revision 1A, dated August 7, 1986, certificated in any category. Compliance is required before February 28, 1988, unless previously accomplished.

To prevent the entry of foreign objects into the power and trim controls in the pedestal, accomplish the following:

A. Replace the power quadrant cover with a cover incorporating slot protection in accordance with CASA Service Bulletin 212-76-05, Revision 1A, dated August 7, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 14, 1987.

Issued in Seattle, Washington, on September 17, 1987.

F. Isaac,

Northwest Mountain Region.

[FR Doc. 87-24108 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ASW-2; Amdt. 39-5742]

Airworthiness Directives; Costruzioni Aeronautiche Giovanni Agusta Model A109A and A109AII Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Costruzioni Aeronautiche Giovanni Agusta Model A109A and A109AII helicopters by individual priority letters. The AD requires an initial inspection and recurring inspections to detect cracks of all tail rotor blades Part Number (P/N) 109-0132-02, all dash numbers, with 400 hours' time in service. The AD is needed to prevent failure of the tail rotor blade and subsequent loss of the helicopter.

DATES: *Effective Date:* October 14, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD 87-83-14, issued February 6, 1987, as revised by AD 87-03-14 R1, issued on February 20, 1987, which contained this amendment.

Compliance: Required within the next 10 hours' time in service after the effective date of this AD unless already accomplished.

ADDRESSES: The applicable telegraphic Technical Bulletin No. 109-5, dated January 27, 1987, may be obtained from Agusta Aviation Corporation, Norcom and Red Lion Roads, Philadelphia, Pennsylvania 19154.

A copy of the telegraphic technical bulletin is contained in the Rules Docket located in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Samuel E. Brodie, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193–0110, telephone (817) 624–5116.

SUPPLEMENTARY INFORMATION: On February 6, 1987, priority letter AD 87–03–14 was issued and made effective immediately as to all known U.S. owners and operators of certain Costruzioni Aeronautiche Giovanni Agusta helicopters. The priority letter AD was revised on February 20, 1987, to correct the omission of a 400-hour threshold to begin inspections and to complete identification of the telegraphic technical bulletin. The priority letter AD requires an initial and recurring inspection of the tail rotor blade and refers to the technical bulletin. The priority letter AD action was necessary to prevent failure of the tail rotor blade and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued February 6, 1987, to all known U.S. owners and operators of certain Costruzioni Aeronautiche Giovanni Agusta helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons. The body of the AD is reworded from the priority letter AD by including the content of the technical bulletin.

The initial and repetitive dye penetrant inspections are now contained in paragraphs (a) and (d) of the priority letter AD.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to the rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 (14 CFR 39.13) of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Costruzioni Aeronautiche Giovanni Agusta: Applies to Model A109A and A109AII helicopters, certificated in any category, fitted with tail rotor blade Part Number 109–0132–02, all dash numbers, with 400 or more hours' time in service.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the tail rotor blade and subsequent loss of the helicopter, accomplish the following:

(a) Within the next 10 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' time in service:

(1) Remove the finish paint or clear lacquer using a lacquer thinner (TURCO 4960–8 or equivalent MIL–R–25134 type) on each side of each blade. The area of paint or lacquer removal is located chordwise from the leading edge to a distance 4 inches aft of the leading edge and is located spanwise from 7.5 inches to 8.7 inches outboard of the center of the blade retention bolt hole.

Note.—Do not use methyl ethyl ketone (M.E.K.) solvent as damage to the bonding agent may occur.

(2) Conduct a dye penetrant or equivalent inspection of the exposed area.

(3) If no cracks are found, protect the area with clear acrylic lacquer before further flight.

(4) If a crack is found, replace the blade with a serviceable blade before further flight.

(b) Prior to the first flight of each day, after the effective date of this AD, accomplish a visual check of the lacquer coated area of each blade for cracks. This check may be performed by the pilot.

Note.—See § 91.173 of the Federal Aviation Regulations for the requirements for listing of compliance and method of compliance with this AD in the aircraft's permanent maintenance record.

(c) If a crack is suspected and additional inspections with a three- to five-power magnifying glass are warranted, an appropriately certificated mechanic must accomplish the additional inspections. If a crack indication is found, conduct dye penetrant inspections in accordance with paragraph (a) of this AD.

(d) Upon request, an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be used when approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, Department of Transportation, Fort Worth, Texas 76193–0100.

Note.—Agusta telegraphic Technical Bulletin No. 109–5, dated January 27, 1987, pertains to this subject.

This amendment becomes effective October 14, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD 87–03–14, issued February 6, 1987, as revised by priority letter AD 87–03–14 R1, issued on February 20, 1987, which contained this amendment.

Issued in Fort Worth, Texas, on September 18, 1987.

L.B. Andriesen,

Acting Director, Southwest Region.

[FR Doc. 87–24106 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–113–AD; Amdt. 39–5737]

Airworthiness Directives; McDonnell Douglas Model DC–10 and KC–10A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain DC–10 series airplanes, which requires inspections and replacement, if necessary, of the inboard slat drive arm. This amendment is prompted by reports that cracks have initiated at a decarburized area and have propagated due to fatigue. This condition, if not corrected, could result in uncommanded motion of the inboard slats, which would then command the outboard slats to follow. Under certain conditions, this could cause the airplane to stall.

EFFECTIVE DATE: October 14, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach,

California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6321.

SUPPLEMENTARY INFORMATION: Two operators of McDonnell Douglas DC–10 airplanes have reported cracks in the inboard slat drive arm. One crack was within the reworkable limits; the arm was reworked and returned to service. Investigation by Douglas Aircraft Company has revealed that the cracks have initiated at a decarburized area and have propagated due to fatigue. Complete failure of the arm could result in an uncommanded motion of the inboard slats, which would then command the outboard slats to follow the position of the inboard slats. Under certain conditions, this could cause the airplane to stall.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A27–203, dated June 29, 1987, and Revision 1, dated July 9, 1987, which describes the inspection procedures and replacement instructions of the inboard slat drive arm.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and rework or replacement, if necessary, of the inboard slat drive arm, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–10 and KC–10A series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the inboard slat drive arm due to fatigue, accomplish the following:

A. Prior to the accumulation of 10,000 landings, or within 15 days after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 90 days, and thereafter at intervals not to exceed 2,000 landings, inspect the inboard slat drive arm in accordance with the expanded magnetic particle, ultrasonic, or eddy current inspection (Option 2) procedures in the Accomplishment Instructions in McDonnell Douglas Service Bulletin A27–203, Revision 1, dated July 9, 1987, or later FAA-approved revision.

1. If crack(s) are found that are beyond the reworkable limits defined by McDonnell Douglas Service Bulletin A27–203, Revision 1, dated July 9, 1987, or later FAA-approved revision, before further flight, replace the cracked arm in accordance with the Service Bulletin.

2. If crack(s) are found that are within the reworkable limits defined by McDonnell Douglas Service Bulletin A27–203, Revision 1, dated July 9, 1987, or later FAA-approved revision, before further flight, rework or replace the arm in accordance with the Accomplishment Instructions in that Service Bulletin.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publication, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective October 14, 1987.

Issued in Seattle, Washington, on September 17, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–24107 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWA–14]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of two Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While six airways were included in the notice only V–184 and V–188 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V–162, V–167, V–184, V–188, V–203 and V–205 located in the vicinity of New York (52 FR 26491). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guideline. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Due to technical and administrative problems only V–184 and V–188 will be implemented at this time. Implementation of the other four airways will be delayed until a later date. With respect to V–188 the segment from Carmel, NY, and Groton, CT, is deleted. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of two Federal airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While six airways were included in the notice only V–184 and V–188 will be implemented at this time due to technical and administrative problems. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [AMENDED]

2. § 71.123 is amended as follows:

V–184 [Revised]

From Erie, PA; Tidioute, PA; Philipsburg, PA; Harrisburg, PA; INT Harrisburg 135° and

Modena, PA, 274° radials; Modena; INT Modena 120° and Woodstown, NJ, 326° radials; Woodstown; Cedar Lake, NJ; Atlantic City, NJ; INT Atlantic City 055° and Kennedy, NY, 198° radials; to INT Kennedy 198° and Robbinsville, NJ, 112° radials.

V–188 [Amended]

By removing the words "to Sparta." and substituting the words "Sparta; INT Sparta 082° and Carmel, NY, 243° radials; to Carmel."

Issued in Washington, DC, on October 6, 1987.

Signed by:

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–24109 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–AEA–8]

Alteration of VOR Federal Airways; Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment improves the flow of terminal and en route traffic in an area where the Expanded East Coast Plan (EECP) is currently implemented following the relocation of the Harrisburg, PA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC). The immediate need for an airway between Harrisburg and terminals in southern New Jersey became apparent during the early implementation of the EECP. The extension of V–469 in the area improves flight planning and reduces controller workload.

DATES:

Effective date—0901 UTC, November 19, 1987.

Comments must be received on or before November 26, 1987.

ADDRESS: Send comments on the rule in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87–AEA–8, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Request for Comments on The Rule

Although this action is in the form of a final rule, which involves extending a current airway (V–469) from Harrisburg, PA, to Woodstown, NJ, which is necessary to complement the EECP, by improving the traffic flow between Harrisburg and southern New Jersey airports, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the description of VOR Federal Airway V–469 by extending the airway from Harrisburg, PA, to Woodstown, NJ. This action is required on an immediate basis to enhance the efficient en route flow of traffic in an area where the EECP is currently implemented. The need for the additional airway became apparent following the relocation of the Harrisburg, PA, VORTAC in 1987. Traffic between Harrisburg, PA, and Woodstown, NJ, was not considered in the development of the EECP, Phase I and Phase II, but has subsequently been determined to be a factor which requires immediate accommodation. This airway is added at this time as a necessary enhancement to the EECP. The technical evaluation and the flight inspection required to establish this segment of V–469 have been completed. This action reduces delays by allowing operations for short distances to remain on tower frequencies and under tower control. This action also improves flight planning and reduces controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to alter the description of VOR Federal Airway V–469. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.23 [Amended]

2. § 71.123 is amended as follows:

V–469 [Amended]

By removing the words "to Harrisburg, PA." and substituting the words "Harrisburg, PA; Dupont, DE; to Woodstown, NJ."

Issued in Washington, DC, on October 5, 1987.

Original signed by:

Daniel J. Peterson,

Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 87-24112 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-12]

Removal of Control Zone; Camden, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action will remove the control zone at Camden, AR. This action is necessary because hourly and special weather observations, one of the requirements in the establishment of a control zone, are no longer available. This action will raise the floor of controlled airspace in the vicinity of the Harrell Field Airport, Camden, AR, to 700 feet above ground level (AGL).

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On April 9, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the control zone at Camden, AR (52 FR 12935).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the control zone at Camden, AR. Weather observations, both hourly and special, must be taken during the times and dates a control zone is in effect. Camden, AR, no longer meets the criteria for retention of the control zone since Sunbelt Airlines, who was providing weather observations, ceased operations. This action will raise the floor of the controlled airspace to 700 feet AGL in the vicinity of the Harrell Field Airport (Latitude 33°37'15" N., Longitude 92°45'45" W.).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Camden, AR [Removed]

Issued in Forth Worth, TX, on October 5, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-24113 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-29]

Alteration of Jet Route and VOR Federal Airways; Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the description of Federal Airway V-162 as published in the **Federal Register** on July 21, 1987, along with several other airspace actions (52 FR 27328). The description of V-162 as published was not technically correct with respect to the route alignment around Harrisburg, PA.

EFFECTIVE DATE: 0901 UTC, October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 87-16435, which was published on July 21, 1987, altered the descriptions of VOR Federal Airways V-12, V-162, V-184, V-210 and Jet Route J-152 located in the vicinity of Harrisburg, PA (52 FR 27328). The words "Harrisburg; INT" were inadvertently omitted from the description making it technically incorrect although the charting would not be affected by the mistake. This action corrects the error so that the correct technical description is incorporated into the rule.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways and jet routes.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** Document 87-16435, as published in the **Federal Register** on July 21, 1987, the entry for V-162 under § 71.123 is corrected to read as follows:

§ 71.123 [Amended]

V-162 [Amended]

By removing the words "From INT Martinsburg, WV, 130° and Harrisburg, PA, 204° radials; Harrisburg 080° and East Texas, PA, 260° radials;" and substituting the words "From INT Martinsburg, WV, 130° and Harrisburg, PA, 201° radials; Harrisburg; INT Harrisburg 092° and East Texas, PA, 251° radials;"

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on October 6, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-24110 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 87-AWP-17]

Alteration and Establishment of Restricted Areas; Yuma, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of Restricted Areas R-2306A/B, R-2307 and R-2308A and establishes Restricted Areas R-2306D and R-2308C located near Yuma, AZ. This action releases additional airspace needed to permit realignment of the Arlin arrival routing serving Sky Harbor Airport, Phoenix, AZ.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations alter the descriptions of Restricted Areas R-2306A/B, R-2307 and R-2308A and establish Restricted Areas R-2306D and R-2308C located near Yuma, AZ. Restricted Areas R-2306D and R-2308C are also added to the Continental Control Area. This action releases a portion of restricted airspace at Flight Level 240 and above to enable a realignment of the Arlin arrival routing which will improve air traffic flows to and from the Phoenix area. Although this action establishes Restricted Areas R-2306D and R-2308C, no new additional restricted airspace will be formulated. This action merely reduces and subdivides the existing restricted area airspace to provide for the Arlin arrival routing. Because this action will release additional airspace back to the public for their use, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor technical amendments in which the public would not be particularly interested. Although the using agency, United States Army did not object to this action, it should be noted that the United States Air Force (USAF) continues to stress their need for all the airspace within the present boundaries of the restricted areas. However, the Air Force requirements are nonhazardous in nature and, therefore, do not require restricted airspace. The FAA is exploring alternatives which will enable the Air Force to meet their flying requirements. Sections 71.151 and 73.23 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area; Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 contines to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. §71.151 is amended as follows:

R-2306D Yuma North, AZ [New]
R-2308C Yuma North, AZ [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.23 [Amended]

4. § 73.23 is amended as follows:

R-2306A Yuma West, AZ [Amended]

Boundaries. Beginning at lat. 33°00' 00" N., long. 114°30'00" W.; to lat. 33°02'48" N., long. 114°30'00" W.; to lat. 33°02'48" N., long. 114°34'00" W.; to lat. 33°15'00" N., long. 114°34'37" W.; to lat. 33°15'00" N., long. 114°15'00" W.; thence south along Highway 95 to lat. 33°52'30" N., long. 114°21'00" W.; to lat. 32°51'45" N., long. 114°27'50" W.; thence north along the west bank of the Colorado River to the point of beginning.

R-2306B Yuma West, AZ [Amended]

Boundaries. Beginning at lat. 33°28'00" N., long. 114°28'00" W.; to lat. 33°28'00" N., long. 114°26'25" W.; to lat. 33°25'15" N., long. 114°13'00" W.; thence south along Highway 95 to lat. 33°15'00" N., long. 114°15'00" W.; to lat. 33°15'00" N., long. 114°30'00" W.; to lat. 33°26'00" N., long. 114°30'00" W.; to the point of beginning.

R-2306D Yuma North, AZ [New]

Boundaries. Beginning at lat. 33°28'00" N., long. 114°26'25" W.; to lat. 33°28'00" N., long. 114°13'00"W.; thence south along Highway 95 to lat. 33°25'15" N., long. 114°13'00" W.; to the point of beginning.
Designated altitudes. Surface to FL 230.
Time of designation. Continuous.
Controlling agency. FAA, Los Angeles ARTCC
Using agency. U.S. Army Yuma Proving Grounds, Yuma, AZ.

R-2307 Yuma, AZ [Amended]

Boundaries. Beginning at lat. 33°00'00" N., long. 114°17'20" W.; to lat. 33°00'00" N., long. 114°11'00" W.; to lat. 33°02'00" N., long. 113°56'30" W.; to lat. 33°02'00" N., long. 113°37'20" W.; to lat. 32°58'00" N., long. 113°37'20" W.; to lat. 32°52'50" N., long. 113°50'10" W.; to lat. 32°52'00" N., long. 114°00'00" W.; to lat. 32°51'15" N., long. 114°21'00" W.; to lat. 32°52'30" N., long. 114°21'00" W.; thence north along Highway 95 to the point of beginning.

R-2308A Yuma East, AZ [Amended]

Boundaries. Beginning at lat. 33°25'15" N., long. 114°13'00" W.; to lat. 33°20'11" N., long. 113°47'42" W.; to lat. 33°17'30" N., long. 113°39'04" W.; to lat. 33°17'30" N., long. 113°45'00" W.; to lat. 33°02'00" N., long. 113°45'00" W.; to lat. 33°02'00" N., long. 113°56'30" W.; to lat. 33°00'00" N., long. 114°11'00" W.; to lat. 33°00'00" N., long. 114°17'20" W.; thence north along Highway 95 to the point of beginning.

R-2308C Yuma North, AZ [New]

Boundaries. Beginning at lat. 33°28'00" N., long. 114°13'00" W.; to lat. 33°20'11" N., long. 113°47'42" W.; to lat. 33°25'15" N., long. 114°13'00" W.; thence north along Highway 95 to the point of beginning.

Designated altitudes. 1,500 feet AGL to FL 230.

Time of designation. Continuous.

Controlling agency. FAA, Los Angeles ARTCC

Using agency. U.S. Army, Yuma Proving Grounds, Yuma, AZ.

Issued in Washington, DC., on October 6, 1987.

Original signed by:

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-24111 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Demonstration Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule amends the comprehensive CHAMPUS regulation to specifically provide that the Director of the Office of CHAMPUS may waive or alter the normally applicable provisions of the CHAMPUS regulations when necessary to conduct a demonstration project required or authorized by law. The final rule, however, would not allow the waiver or alteration of any requirement that may not be waived or altered under applicable law. The final rule is necessary to establish a specific regulatory counterpart to existing statutory authorities for demonstration projects to develop improved methods to finance and deliver health care services under CHAMPUS. It is intended to expedite the administrative processing associated with initiating healthcare demonstration projects.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: LTC David J. Fant, United States Air Force, Office of the Assistant Secretary of Defense for Health Affairs at (202) 697-8975.

SUPPLEMENTARY INFORMATION: The purpose of this final rule is to establish an appropriate regulatory counterpart to the current statutory authority for the conduct of demonstration projects relating to CHAMPUS.

One such statutory authority is 10 U.S.C. 1092, which authorizes studies and demonstration projects relating to delivery of health and medical care. This section authorizes demonstrations of alternative methods for financing and delivering health and medical care services, including those under CHAMPUS. The purpose and effect of this statute is to provide for the waiver or alteration of normally applicable requirements as part of a project to test alternative methods.

In addition to this general statutory authority to conduct demonstration projects, Congress from time to time enacts requirements for DoD to conduct specific demonstration projects. For example, in section 702(a) of the National Defense Authorization Act for Fiscal Year 1987, Congress directed DoD to conduct a demonstration of the CHAMPUS Reform Initiative. This initiative involves alternative methods of financing and delivering CHAMPUS health care services under regional umbrella contracts with competitively-selected contractors. DoD issued a request for proposals for the CHAMPUS Reform Initiative in February 1987.

These two rather recent legislative actions are only part of the urging DoD has received from Congress to actively pursue innovative strategies for improving DoD health care programs. Related Congressional actions include authority for resource sharing agreements (10 U.S.C. 1096), special contracts for delivery of medical care services (10 U.S.C. 1097) and incentives for participation in cost-effective health care plans (10 U.S.C. 1098). The common theme of all of these provisions is the desire to try new approaches to bring about needed improvements in the Military Health Services System, especially CHAMPUS.

Against this backdrop of clear Congressional encouragement for developing innovative methods to finance and deliver health care services, this final rule would establish for CHAMPUS a regulatory counterpart to the applicable statutory demonstration provisions. The final rule simply provides that the normally applicable provisions of the CHAMPUS regulation may be waived or altered by the Director of CHAMPUS in connection with the conduct of a demonstration project required or authorized by law. "Demonstration project" is defined to include projects based on the full applicable range of legislatively required or authorized activities designed to test potential program innovations. However, the final rule would not allow waiver or alteration of requirements that may not under the applicable statutory authorities be waived or altered. This final rule is somewhat analogous to § 199.1(n). That section authorizes the waiver of any provision of the part, except for requirements that may not be waived under the law, under very special circumstances when it would be in the best interest of the program. Like the current § 199.1(n), the proposed new paragraph (o) is limited to special circumstances, namely demonstration projects, and does not allow waiver of requirements of law that may not be waived.

Thus, the effect of this final rule is to assure that normally applicable provisions of the CHAMPUS regulation that are within the administrative discretion of the agency not inhibit the ability of OCHAMPUS to conduct demonstrations consistent with the far-reaching intent of Congress to develop meaningful improvements in health care programs.

The impact of this final rule is limited. It does not reach beyond specifically designed demonstration projects. Nor does it allow for the waiver or alteration of rules regarding the Military Health Services System other than CHAMPUS rules. Also, it does not allow for the waiver of requirements that may not be waived under applicable law.

The final rule also establishes certain procedural requirements whenever OCHAMPUS waives or alters a normally applicable provision of the part in connection with a demonstration To assure that providers, beneficiaries and other interested parties are aware of the demonstration project and the matters affected by the regulatory waiver, the proposed rule provides for notice to be published at least 30 days before the waiver would be effective.

Included in this **Federal Register** notice of the demonstration project would be its duration and an explanation of what it is designed to test. The definition included in the final rule makes clear that these are the key features, limited duration and its nature as a test, that distinguish a demonstration project from a change in program policy or procedure. Because of

these features, these notices of demonstration projects are not covered by public comment practices under DoD Directive 5400.9 (32 CFR Part 296) or DoD Instruction 6010.8.[1] Similarly, individual notices of demonstration projects are not "rules" within the meaning of section 553 of the Administrative Procedure Act because they are not statements of general applicability and future effect that establish or interpret policy or procedure; rather, as is made clear in the definition contained in the final rule, they are time-limited tests. Any generally applicable change in policy or procedure that might arise from a demonstration project will be handled in accordance with established practices for soliciting public comment, to the extent those practices apply.

Discussion of Comments to the NPRM

No public comments were received.

This final rule is not a major rule under the Regulatory Flexibility Act or Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.1(o) is redesignated as § 199.1(p).

3. Add a new paragraph (o) to § 199.1 to read as follows:

§ 199.1 General provisions.

* * * * *

(o) *Demonstration projects*—(1) *Authority.* The Director, OCHAMPUS may waive or alter any requirements of this regulation in connection with the conduct of a demonstration project required or authorized by law except for any requirement that may not be waived or altered pursuant to 10 U.S.C. Chapter 55, or other applicable law.

(2) *Procedures.* At least 30 days prior to taking effect, OCHAMPUS shall publish a notice describing the demonstration project, the requirements of this regulation being waived or altered under paragraph (o)(1) of this section and the duration of the waiver or alteration. Consistent with the purpose and nature of demonstration projects, these notices are not covered by public comment practices under DoD Directive 5400.9 (32 CFR Part 296) or DoD Instruction 6010.8.

(3) *Definition.* For purposes of this section, a "demonstration project" is a project of limited duration designed to test a different method for the finance, delivery or administration of health care activities for the uniformed services. Demonstration projects may be required or authorized by 10 U.S.C. 1092, any other statutory provision requiring or authorizing a demonstration project or any other provision of law that authorizes the activity involved in the demonstration project.".

* * * * *

Thomas J. Condon,

Acting Division Chief, Directives Division, Department of Defense.

[FR Doc. 87-24174 Filed 10-16-87; 8:45 am]

BILLING CODE 3810-01-M

[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Attn: Code 301, Philadelphia, Pa. 19120.

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS AVENGER

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS AVENGER (MCM-1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a mine countermeasure ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS AVENGER (MCM-1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex 1, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex 1, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex 1, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex 1, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex 1, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex 1, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex 1, sec. (3)(a)	Percentage horizontal separation attained.
USS AVENGER	MCM-1							x	63

Date: September 29, 1987.

Approved:

H. Lawrence Garrett, III,

Under Secretary of the Navy.

[FR Doc. 87-24148 Filed 10-16-87; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS SPRUANCE

AGENCY: Department of the Navy.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS SPRUANCE (DD-963) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SPRUANCE (DD-963) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval destroyer. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex 1, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex 1, sec. 2(f)	Vertical separation of masthead lights used when towing less than reguired by Annex 1, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex 1, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex 1, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex 1, sec. (3)(a)	Percentage horizontal separation attained.
USS SPRUANCE	DD-963						x	x	46

Date: September 29, 1987.

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

[FR Doc. 87-24149 Filed 10-16-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-87-081]

Special Local Regulations, Master of the Bay Pro/Am Regatta; Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Master of the Bay Pro-Am Regatta. This event will be held on October 22, 23 and 24, 1987, in the waters of the Lower Chesapeake Bay. The race course extends from the pier at Ocean View, Norfolk, Virginia. Approximately four and one half

nautical miles in a northeasterly direction. These special local regulations are considered necessary to control vessel traffic and fishing activities within the regulated area during the sailing tournament.

EFFECTIVE DATES: These regulations are effective during the following periods:
11:30 a.m. to 6:00 p.m. on October 22, 1987
9:30 a.m. to 6:00 p.m. on October 23, 1987
9:30 a.m. to 6:00 p.m. and 8:30 p.m. to 9:30 p.m. on October 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705–5004 (804–398–6204).

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations and good cause exists for making them effective in less than 30 days from date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was received in September 24, 1987 leaving insufficient time to publish a notice of proposed rules or to provide a delayed effective date. The sponsor of the sailing tournament submitted an application for a permit to hold the Master of the Bay Sailing Tournament to the Virginia Commission of Game and Inland Fisheries on October 17, 1986. The Commission of Game and Inland Fisheries issued a permit on February 10, 1987, but in so doing was not aware that the race would convey a potential impact on commercial fishing in the area, or that special local regulations would be required to control waterborne traffic.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Proposed Regulation

Bay Master Sailing Tournament Inc. is the sponsor of the sailing tournament. The event will consist of sailing vessels 24 foot and up racing a prearranged course in the regulated area. If the event is postponed, the Patrol Commander will issue a Broadcast Notice to Mariners.

There are two regulated areas, one on each side of Thimble Shoal Channel. When combined they form a rectangular shape approximately two nautical miles wide and four and one half nautical miles long extending in a northeasterly direction from shoreline. Thimble Shoal Channel is not included in the regulated areas.

The race course crosses the Thimble Shoal Channel, which is not included in the regulated areas. Normal marine traffic will be permitted in the channel. Therefore, the race participants crossing Thimble Shoal Channel are required to give way to any vessels transiting the channel, notwithstanding the potential impact on their race positions.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic, other than commercial fishermen, will be inconvenienced only slightly.

A regulatory evaluation was conducted at Coast Guard Group Hamption Roads on August 23, 1987, because of a written objection from the Working Waterman's Association of Poquoson, Virginia. The Association's president, signing on behalf of the Working Waterman's Association, estimated that the event as originally planned would cause the watermen to loss $502,500 in revenues.

In response, the sponsor agreed to realign the course to its presently-described configuration, and to shorten the length of the event by one-half day. Moreover, the Patrol Commander has been empowered to authorize Waterman's Association members access into the regulated area when event participants are sailing in other sectors of the regulated course area. The fact that the event will only restrict Commercial Fishermen from using an area two nautical miles wide and four and one half nautical miles long off of the Ocean View Pier for three days out of a year around season. The accommodations made by the sponsor, and in cooperation with the Patrol Commander's authority to permit access to the regulated areas, should reduce the potential economic impact to commercial fishing interests.

The President of the Working Waterman's Association now estimates that the gill net fishermen and clammers would lose approximately $120,000 in revenue during the three days of the event as restructured by the sponsor. However, the Virginia Department of Natural Resources feels that most of the watermen will be harvesting oysters in the James River during that period, and only a few vessels will be working in the Ocean View area. The Coast Guard therefore, does not believe that the $120,000 figure for lost revenues to the watermen is an accurate projection. Even were $120,000 in revenue to be forfeited that amount would not offset the sponsor's $273,000 invested in the event. Any other economic impact of this proposal is expected to be so minimal, that further regulatory evaluation is unnecessary.

While some potential economic impact on interests represented by the Working Waterman's Association is acknowledged, it does not warrant withholding the permit for this event or publication of these special local regulations. Therefore, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35–05081 is added to read as follows:

§ 100.35–05081 Lower Chesapeake Bay, Norfolk, Virginia.

(a) *Definitions*—(1) *Regulated areas.* (i) Regulated area south of Thimble Shoal Channel is enclosed by a line connecting the following points: Latitude 36°56.52′ North, longitude 76°13.85′ West, latitude 36°57.71′ North, longitude 76°15.83′ West, latitude 37°00.0′ North, longitude 76°13.65′ West, and latitude 36°59.38′ North, longitude 76°11.21′ West.

(ii) Regulated area north of Thimble Shoal Channel is enclosed by a line connecting the following points: Latitude 36°59.75′ North, longitude 76°10.86′ West, latitude 37°00.4′ North, longitude 76°13.7′ West, latitude 37°01.6′, North, longitude

76°12.13' West, and latitude 37°00.45' North, longitude 76°10.86' West.

(iii) Fireworks regulated area is enclosed by a circle with a radius of one nautical mile that is centered on latitude 36°57.55' North, longitude 76°14.41' West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned officer of the Coast Guard who has been designated by the Commander, Group Hampton Roads.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop his vessel immediately upon being directed to do so by any Coast Guard commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign, and

(ii) Proceed as directed by the officer.

(3) Spectator vessels may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(4) The Coast Guard Patrol Commander may allow the transit of marine traffic through the regulated area when it will not interfere with the regatta.

(5) The Coast Guard Patrol Commander may allow commercial fishing within the regulated areas when the fishing activities will not interfere with the regatta.

(6) Vessel operators shall remove all unattended crab pot markers, gill nets, or other fishing gear from the regulated areas prior to the effective times listed in paragraph (c)(1) of this section.

(7) The race sponsor may remove any unauthorized obstructions to navigation in the regulated areas.

(8) Sailing vessels and other vessels participating in the event shall give way to any vessels transiting Thimble Shoal Channel.

(c) *Effective dates.* (1) These regulations are effective for the regulated areas north and south of Thimble Shoals Channel during the following periods:

(i) 11:30 a.m. to 6:00 p.m. on October 22, 1987;

(ii) 9:30 a.m. to 6:00 p.m. on October 23, 1987;

(iii) 9:30 a.m. to 6:00 p.m. on October 24, 1987.

(2) These regulations are effective for the fireworks regulated area from 8:30 p.m. to 9:30 p.m. on October 24, 1987.

Dated: October 9, 1987.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 87-24167 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-14-N

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33 CFR Part 117

[CGD7 87-05]

Drawbridge Operation Regulations; New Pass, Sarasota, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation (FDOT) the Coast Guard is changing the regulations governing the New Pass bridge on State Route 789 at Sarasota, Florida, by permitting the number of openings to be limited during certain hours. This change is being made because of complaints about vehicular traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on November 18, 1987.

FOR FURTHER INFORMATION CONTACT: Mrs. Zonia Reyes, Bridge Section, Seventh Coast Guard District, telephone (305) 536-4103.

SUPPLEMENTARY INFORMATION: The Commander, Seventh Coast Guard District, published a notice of proposed rulemaking on April 16, 1987, and a Public Notice dated May 1, 1987, soliciting comments on a regulation that would have restricted the bridge openings on Saturdays, Sundays, and Federal holidays between 10 a.m. and 6 p.m. to once every 20 minutes, on the hour, twenty minutes past the hour and forty minutes past the hour. A significant number of responses were received about the proposal. The majority objected to the weekend only limitations. We reviewed new data about bridge openings from January through mid-May and concluded that weekday restrictions will help alleviate some traffic problems.

The Commander, Seventh Coast Guard District, published a supplemental notice of proposed rulemaking on July 13, 1987, and a Public Notice dated July 13, 1987. In each notice, interested persons were given until August 13, 1987, to submit their comments.

Drafting Information

The drafters of this notice are Mrs. Zonia C. Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Ten comments were received about the supplemental rule change. Two commenters supported the regulations as proposed; eight commenters objected to the proposal. Seven of those asked that the bridge openings be limited to once every 30 minutes, at one quarter past the hour, and three quarters past the hour. One commenter objected to the proposal and asked that the bridge openings be limited to once every 30 minutes, on the hour and thirty minutes past the hour, except during the period of National Weather Service Hurricane Alerts and at such times the Governor of the State of Florida orders the evacuation of Longboat Key for reasons of public safety. The Coast Guard has carefully considered the comments. We have determined that vessels can't wait safely for more then 20 minutes because of swift currents and limited holding area. Closure of drawbridges during natural disasters or civil disorders is already outlined in the 33 CFR 117.33. The final rule is unchanged from the supplemental rule published on July 13, 1987, except for minor editorial revisions needed to ensure a consistent format for drawbridge regulations.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 16, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.311 is added to read as follows:

§ 117.311 New Pass.

The draw of the State Road 789 bridge, mile 0.0, at Sarasota, shall open on signal; except that, from 7 a.m. to 6 p.m., Monday thru Friday, except Federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need not open except on the hour, twenty minutes past the hour, and forty minutes past the hour. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed at any time.

Dated: September 23, 1987.

M.J. O'Brien,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 87–24166 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM053–PA; (FRL–3277–9)]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving a request from the Commonwealth of Pennsylvania to amend Article XX of Allegheny County's rules and regulations (Appendix 23, section 533). This amendment adds new regulations for abrasive blasting.

DATES: This action will be effective on December 18, 1987 unless notice is received by November 18, 1987 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the SIP revision, as well as accompanying documentation, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Eighth Floor, Philadelphia, PA 19107, Attn: Esther Steinberg.

Allegheny County Bureau of Air Pollution Control, 301 Thirty-ninth Street, Pittsburgh, PA 15201, Attn: Ronald Chleboski.

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Gary Triplett.

All comments should be submitted to Mr. Joseph Kunz, Chief, PA/WV Section at the EPA, Region III address above, EPA Docket No. AM053–PA.

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597–9134.

SUPPLEMENTARY INFORMATION: On February 3, 1987, the Pennsylvania Department of Environmental Resources (DER) submitted a request from Allegheny County to add Appendix 23, Section 533 to Article XX of its rules and regulations. This amendment provides the Allegheny County Health Department (ACHD) with the authority to regulate particulate matter emissions from sandblasting operations, and the Commonwealth has requested that this amendment be reviewed and processed as a revision to the Pennsylvania State Implementation Plan (SIP). The Commonwealth has provided proof that, after adequate public notice, public hearings were held with regard to this amendment.

This amendment applies to all persons conducting, or allowing to be conducted, abrasive blasting (a technique for cleaning and removing paint from structures, commonly known as sandblasting) of any surface or structure which has a total area greater than 1,000 square feet. This amendment sets forth requirements for the following:

1. Visible Emissions

This provision places limitations on the emissions from abrasive blasting in the absence of lead paint, abrasive blasting of lead paint, and high-silica abrasives.

2. Multiple Nozzles

This specifies that emissions from abrasive blasting which employ multiple nozzles shall be judged as a single source for purposes of complying with this regulation.

3. Permits

This specifies that a project or Annual Abrasive Blasting permit must be issued by the Director of the Allegheny County Bureau of Air Pollution Control (BAPC) prior to abrasive blasting of any surface, structure, or part thereof to which this regulation applies.

4. Monitoring

This allows the Director of the BAPC discretion to require monitoring at an abrasive blasting operation if it is determined that the operation may reasonably be anticipated to have an adverse impact upon the public health, safety or welfare due to, among other concerns, the presence of lead paint or high-silica abrasives.

5. Clean-up and Disposal Procedures

This provision establishes clean-up procedures pertaining to abrasive and blast residue upon termination of abrasive blasting activities each day.

6. Ambient Lead Levels

This gives the Director of the BAPC the authority to immediately suspend any abrasive blasting operation involving lead paint if lead levels in the ambient air equal or exceed 10 micrograms per cubic meter ($\mu g/m^3$), eight-hour concentration, or equal or exceed 25 $\mu g/m^3$ during any period of time.

7. Ambient Respirable Free Silica Levels

This provision gives the Director the authority to immediately suspend any abrasive blasting operation involving a high-silica abrasive if the respirable (particles smaller than 10 micrometers (10^{-6} meters) in size) free silica levels in the ambient air exceed 100 $\mu g/m^3$, eight-hour concentration.

8. Notice of Commencement

This requires that the owner or operator telephone the Director of the BAPC immediately before the actual start of the abrasive blasting operation.

9. Revocation

This gives the Director of the BAPC the authority to revoke an abrasive blasting permit under certain conditions.

10. Violations

This provision specifies that any violation of any requirement of this Section shall be a violation of this Article giving rise to the remedies provided in section 305 of Article XX.

11. Appeals

This allows appeals pursuant to the provisions of section 804.H of Article XX.

12. Alternative Standards or Procedures

This gives the Director of the BAPC the authority to approve alternative standards or procedures to be followed

on a specific abrasive blasting project on a case-by-case basis.

Conclusion

The Administrator's decision to approve this revision is based on a determination that the amendment meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans. Allegheny County has not sought credit for these controls in any attainment demonstration under the Clean Air Act. By this action, EPA finds that these measures bear a significant relationship to the attainment and/or maintenance of the National Ambient Air Quality Standards for particulate matter and lead.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 1987. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Date: October 2, 1987.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

SUBPART NN—PENNSYLVANIA

2. Section 52.2020 is amended by adding paragraph (c)(69) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(69) Revision to the Allegheny County portion of the Pennsylvania State Implementation Plan was submitted by the Commonwealth on February 3, 1987.

(i) *Incorporation by reference.* (A) Amendment to the Allegheny County portion of the Pennsylvania SIP for Air Pollution Control, Appendix 23, Section 533, Abrasive Blasting, approved on October 9, 1986.

(B) Letter dated February 3, 1987, from the Commonwealth of Pennsylvania to EPA.

[FR Doc. 87–23994 Filed 10–16–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–1–FRL–3177–7]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Disapproval of Alternative Reasonably Available Control Technology Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision is an alternative reasonably available control technology (RACT) determination involving relaxed emission limitations and an extension of the final compliance date for three paper and fabric coating lines at Arkwright Incorporated (Arkwright) in Fiskeville, Rhode Island.

EPA is disapproving this revision for the following reasons: (1) The revision request does not contain adequate support that the emission limitations already in Rhode Island's SIP for this source cannot feasible be met. (2) The revision request does not contain adequate support that the compliance date extension to June, 1988 for the reformulation of coatings on one of Arkwright's coating lines is expeditious. (3) The revision request does not contain adequate support that a reformulation program or add-on control program is not feasible on one of Arkwright's coating lines. (4) The revision request does not contain adequate support that a final compliance date extension to June 30, 1987, for the installation of control equipment on one of Arkwright's coating lines is justifiable. As a result of this disapproval, Arkwright remains subject to the emission limitations and final compliance date found in Rhode Island Regulation No. 19, Subsection 19.3.1.

The intended affect of this section is to disapprove the SIP revision for Arkwright Incorporated under Section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on November 18, 1987.

ADDRESSES: Copies of the submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203; and the Air and Hazardous Materials Division, Department of Environmental Management, 75 Davis Street, Cannon Building, Room 204, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: David B. Conroy (617) 565–3252, FTS 835–3252.

SUPPLEMENTARY INFORMATION: On August 1, 1986 (51 FR 27560), EPA published a notice of proposed rulemaking (NPR) to disapprove the administrative consent agreement between the Rhode Island Department of Environmental Management (DEM) and Arkwright Incorporated which was submitted by the State of Rhode Island as a SIP revision. Today's final rulemaking notice discusses EPA's review of Rhode Island's SIP submission in five parts:

I. Background Information
II. Summary of the SIP Revision
III. Deficiencies of the SIP Revision
IV. Public Comments
V. Final Action

I. Background Information

On July 6, 1983 (48 FR 31026), EPA approved Rhode Island's Ozone Attainment Plan and incorporated it into the SIP. As part of the attainment plan, Rhode Island adopted Regulation No. 19, "Control of Volatile Organic Compounds from Surface Coating Operations." A source subject to this regulation is required under Subsection 19.3.1 to apply RACT to its VOC emitting processes. The RACT limitations specified in Subsection 19.3.1 are equivalent to those specified in EPA's applicable Group I control techniques guidelines (CTG) document.

On November 5, 1985, the Rhode Island DEM submitted a revision to its SIP consisting of an administrative consent agreement between the DEM's Division of Air and Hazardous Materials and Arkwright of Fiskeville, Rhode Island. This consent agreement was issued pursuant to provisions in Rhode Island Regulation No. 19, Subsection 19.3.3 which allow the DEM to impose alternative compliance dates and emission limitations to those set forth in Subsection 19.3.1 on a case-by-case basis provided that certain conditions are met. The process is commonly referred to as making an alternative RACT determination.

In order to qualify for an alternative RACT determination under Subsection 19.3.3, a source must have documented to the satisfaction of the DEM's Division of Air and Hazardous Materials that the applicable emission limitations set forth in Subsection 19.3.1 could not be met. This must be done at least 18 months prior to the final compliance date of July 1, 1985, set forth in Subsection 19.3.1. This documentation must involve demonstrating both economically and technologically that neither coating reformulation nor the installation of a control system is feasible or even partially feasible.

Amendments to Rhode Island Regulation No. 19 which included the alternative RACT provisions of Subsection 19.3.3 were submitted to EPA by Rhode Island on May 14, 1982. EPA approved these amendments on July 6, 1983 (48 FR 31026) as part of Rhode Island's Ozone Attainment Plan. It was EPA's intention when approving Subsection 19.3.3 that all compliance date extensions and emission limitation relaxations granted pursuant to this subsection by the DEM would be submitted to EPA as SIP revisions and that any technical or economic analysis would be independently reviewed and evaluated by EPA. The DEM agrees that EPA has the authority to review such compliance date extensions and emission limitation relaxations.

II. Summary of the SIP Revision

Arkwright Incorporated operates three existing paper and fabric coating lines (coater numbers 5, 6, and 7) in Fiskeville, Rhode Island. At the time the consent agreement was submitted as a SIP revision, a forth existing line (coater no. 4) was to be used as an emergency standby for coater no. 6. This line has since been dismantled and no longer exists at Arkwright. There is one additional line at Arkwright (coater no. 3) which was installed in 1984 and is subject to different control requirements than the existing lines. The lines are used for the coating of plastic films such as transparencies. Due to the nature of the substrates coated, the existing surface coating lines at Arkwright are subject to the control requirements of Rhode Island SIP Regulation No. 19, Subsection 19.3.1 which requires that the VOC content of each coating employed at Arkwright be at or below 2.9 lbs VOC/gallon of coating (minus water) by July 1, 1985, except as provided in Subsection 19.3.3. (Note: 2.9 pounds VOC/gallon of coating (minus water) is the emission limitation specified in EPA's control techniques guideline (CTG) document for such facilities.)

Pursuant to Subsection 19.3.3, the Rhode Island DEM has submitted a revision providing relaxed emission limitations and an extended compliance date for Arkwright. The DEM believes that the provisions of the consent agreement submitted as the SIP revision constitute an alternative RACT determination for the source.

Arkwright has primarily employed solvent-based coatings in its coating lines. During 1980, the first full year this regulation was effective, the VOC emissions from this source were 1042 TPY. In 1984, the VOC emissions from this source were 638 TPY with lines 5, 6 and 7 emitting 70 TPY, 191 TPY and 377 TPY, respectively. Under the proposed consent agreement, Arkwright will be required to install an add-on control device on line 7 by June 30, 1987. This device should reduce approximately 320 TPY of VOC emissions from this line.

The consent agreement also requires Arkwright to reformulate the coatings used on line 6 by June, 1988. All other coatings on line 5 and on lines 6 and 7, before reformulation or the installation of add-ons, would be subject to an emission limit of 7.03 lbs VOC/gallon of coating (minus water). This limit will be reestablished on a yearly basis by the DEM to reflect VOC reductions Arkwright has achieved from its coatings.

III. Deficiencies of the SIP Revision

As previously stated, EPA is disapproving this revision because of several deficiencies in the consent agreement negotiated between Arkwright and the DEM. Each of the deficiencies is discussed below.

1. Compliance Date Extension—Reformulation

The Rhode Island DEM has requested a compliance date extension to June 30, 1988 for Arkwright Incorporated to reformulate its coatings on coater No. 6. Section 172(b)(2) of the Clean Air Act (CAA), 42 U.S.C. 7502(b)(2), requires that all provisions of an implementation plan for a state relating to attainment and maintenance of national ambient air quality standards in any nonattainment area must provide for the implementation of all reasonably available control measures as expeditiously as practicable. Therefore, for each individual compliance date extension request, EPA must determine whether or not the request does, in fact, evidence an expeditious timeframe.

All requests for compliance date extensions in nonattainment areas must conform to the requirements of section 172 of the Clean Air Act, 42 U.S.C. 7502. In order to demonstrate that a compliance date extension is consistent with the statutory requirement that all reasonably available control measures be implemented as expeditiously as practicable (section 172(b)(2)), the source must provide evidence of having made reasonable efforts to develop and/or install low-solvent technology at its facility from the time of adoption by the state of the applicable regulations without any significant periods of inaction. In addition, because section 172(a) requires all SIPs to provide for attainment of the ozone standard by December 31, 1987, in no case will a compliance date extension request extending beyond 1987 be considered expeditious. Further, in order to ensure that the statutory requirements of reasonable further progress (section 172(b)(3)) and timely attainment are met, a compliance date extension request must contain commitments to install add-on control equipment by a specified date if a low-solvent development program fails by a specified date.

Rhode Island Regulation No. 19 was effective on November 13, 1979 and conditionally approved by EPA on May 7, 1981 (46 FR 25466). EPA fully approved Rhode Island Regulation No. 19 as part of Rhode Island's Ozone Attainment Plan on July 6, 1983 (48 FR 31026). Arkwright has not adequately described the steps it took to investigate the use of complying coatings since the adoption of Regulation No. 19. Without this detailed explanation, it is not possible to substantiate Arkwright's claim that it needs an extension beyond the July 1, 1985 final compliance date contained in Regulation No. 19. The type of data needed to substantiate Arkwright's claim should have included, but are not limited to, a summarization of the information gathering effort that was undertaken by the company to investigate the availability of new low/no VOC technologies, a summarization of the results of all screening tests that were performed for the evaluation of new low/no VOC technologies, a

summarization of the results of all full or limited scale production tests, and a summarization of the results of all market trials that were conducted for promising low/no VOC technologies. Additionally, the company should have submitted a detailed schedule outlining when future activities regarding its reformulation program will be completed.

Furthermore, EPA does not consider a compliance date extension request extending beyond December 31, 1987 to be expeditious and cannot approve such a request. Moreover, EPA cannot approve this request because there is no provision in Arkwright's consent agreement requiring the company to install add-on control equipment should the low solvent development program fail.

2. Compliance Date Extension—Add-on Control

The Rhode Island DEM has requested a compliance date extension to June 30, 1987 for Arkwright Incorporated to install add-on controls on coater No. 7. The final compliance date in Regulation No. 19 is July 1, 1985. By this date, Arkwright should have installed add-on control equipment on coater No. 7. Arkwright claims it could not afford to install the add-on control equipment by July 1, 1985 and requested an extension pursuant to Rhode Island Regulation No. 19, Subsection 19.3.3. EPA has done an extensive review of economic and financial information submitted by Arkwright. That review has indicated that Arkwright had and continues to have the capability to make the expenditures necessary to install and operate add-on control equipment prior to June 30, 1987. EPA does not consider this schedule for the installation of add-on control equipment which extends the compliance date 24 months after the final compliance date to be expeditious.

3. Emission Limitation on Uncontrolled Line

The Rhode Island DEM has requested an alternative emission limitation for the coatings used on coater No. 5. The limit that the coatings on this line must meet when operating is 7.03 lbs VOC/gallon coating (minus water). The DEM's Division of Air & Hazardous Materials will reestablish this limit on a yearly basis to reflect VOC reductions Arkwright has achieved from its coatings. Arkwright has not provided adequate support which shows that a reformulation program on this coater is infeasible. Furthermore, Arkwright has not provided adequate support which shows that add-on control equipment is not feasible on this coater.

IV. Public Comments

EPA has reviewed the two letters of public comment which were received on EPA's proposed action of Rhode Island's SIP submittal. Each of the issues raised in the comments is addressed below. For some comments, a more detailed discussion of the comments submitted and EPA's response is contained in EPA's Technical Support Document prepared for and in the docket of this rulemaking action. Copies of the Technical Support Document are available from the Region I office listed in the **ADDRESSES** section of this notice.

Comment: One commenter claimed that Arkwright's plan was approved to attain compliance with Regulation No. 19. The commenter stated that the plan is consistent with Regulation No. 19 and that Arkwright did not receive a final compliance limit other than that contained in Regulation No. 19. The commenter maintained that Arkwright will meet the 2.9 lbs VOC/gallon coating (minus water) emission limitation.

Furthermore, two commenters stated that Arkwright has been engaged in a reformulation program since the late 1970's and has reduced its emissions from 1042 tons/year in 1980 to 638 tons/year in 1984. Therefore, the commenter asserted that EPA's statements in the Technical Support Document about Arkwright's reformulation program are incorrect. One commenter further stated that EPA's statements are incorrect because Arkwright has submitted detailed documentation to the Rhode Island DEM which supports its reformulation efforts for the past several years.

Response: In order to receive an alternative RACT determination, the provisions of Subsection 19.3.3 require that the facility "demonstrate both economically *and* technically that neither coating reformulation nor the installation of a control system is feasible or even partially feasible." Arkwright has not demonstrated that it is both economically and technologically infeasible to achieve compliance by the established timeframe in the regulation. Therefore, Arkwright's compliance plan is not consistent with the federally-approved regulation.

Furthermore, there is no final compliance date in the consent agreement or any requirements requiring Arkwright to meet the 2.9 emission limit. Additionally, there is no requirement in the agreement that line number 6 achieve daily compliance with the 2.9 limit after completion of its reformulation program. By information supplied by Arkwright, EPA knows that Arkwright's reformulation program is not addressing every coating used on line number 6. After June 1988, there is potential for violations on line number 6 since the company will use coatings on that line over the 2.9 limit.

As stated, the actual reduction that has already been achieved by Arkwright is approximately 400 tons per year in VOC. However, it is possible that most of this reduction came from the closure of line numbers 4 and 8. (In 1980, line number 4 emitted approximately 229 TPY and line number 8 emitted approximately 208 TPY.)

Furthermore, on September 26, 1985, Arkwright submitted formulation data for each coating it used in the period from July 1, 1985 through August 15, 1985. Of the 57 formulations used on the existing coating lines (line numbers 5, 6 and 7), only one formulation complies with the 2.9 lbs VOC/gallon coating (minus water) emission limitation. Of equal importance is the fact that every coating used during that time period that Arkwright designated as a "trial formulation" exceeds the 2.9 lbs VOC/gallon (minus water) limitation. Therefore, Arkwright has not demonstrated that it has made substantial progress with its reformulations. To date, EPA has not received the detailed documentation provided by Arkwright to the DEM which the commenter referenced in the comment letter.

Comment: One commenter stated that the compliance plan set forth by Arkwright was reviewed to determine if it was consistent with the source-specific RACT determination made for Arkwright as part of a RACT study done by an independent consultant. The commenter stated that the RACT study clearly stated that Arkwright was not profitable at the time of the report. Another commenter states that Arkwright was not profitable during the years 1981, 1982, and 1983 and per "EPA's own RACT methodology" would not be required to install add-on control equipment. One commenter claimed that all parties involved, including EPA, reviewed the RACT study's document and adequate time was available to incorporate any suggestions made. The commenter stated that EPA was silent on how the RACT study was to be interpreted until more than a year after the study had begun.

The commenter stated that EPA's analyses did not follow the economic criteria used in the RACT study, that the cost per ton criteria EPA used in its analyses is more stringent than that used for other EPA regulatory actions, and that the economic criteria EPA used

in its analyses concerning profits and availability of loans are more stringent than anything ever discussed and does not represent RACT. Another commenter also stated that EPA has attempted to indicate that the criterion for judging feasibility is the company's ability to borrow money from a sound parent company.

The commenter stated that the compliance plan developed by Arkwright (which was incorporated into the DEM's consent agreement) represents RACT under the criteria developed by the RACT study's report.

Response: The RACT study conducted by the consultant did not use "EPA's own RACT methodology" to conduct the financial analyses. The methodology used to analyze the company's financial status was developed by the contractor. Further, the criteria developed by the contractor during the RACT study should not have exclusively been used by the Rhode Island DEM to determine RACT for Arkwright. The purpose of the study was to provide the State of Rhode Island with justification to support its SIP revisions. The purpose of the study was not to develop EPA policy on economic analyses. EPA never approved or endorsed the economic criteria contained in the contractor's study. As noted in comments submitted by DEM, EPA informed DEM in 1984, well before execution of the consent agreement between Arkwright and DEM in June of 1985, that EPA did not accept the contractor's determinations concerning the economic feasibility of installing controls. EPA also informed Arkwright, by a letter in May of 1985, that EPA had determined that Arkwright did have the economic resources to install add-on controls. In that letter, EPA explained the economic criteria that EPA had applied. Finally, in public comments submitted on the proposed consent agreement, EPA informed DEM that EPA did not consider the agreement to represent RACT.

The financial tests developed by the contractor are very generic and, if solely used, would allow many sources to be exempted from control. EPA envisioned those tests to be a screening tool to determine which sources clearly should install controls. Further analysis would be done for any source that claimed it could not afford to install and operate add-on control equipment.

Further, the RACT study does not clearly state that Arkwright was not profitable at the time of the report. The statements made in the RACT study do not represent a clear statement that add-on controls are economically infeasible. Also, the statements in the RACT study are not based on a thorough economic analysis of Arkwright's financial condition. Such an analysis should consider all aspects of a company's financial condition, not just immediate profitability, to determine whether the company is capable of undertaking the installation of pollution control equipment.

In Arkwright's case, the contractor's report did not provide adequate support to justify an alternative RACT. It is for that reason that EPA conducted its own analyses of the economic and technological feasibility of add-on controls. Those analyses do include a company's ability to borrow money from a sound parent company, although that is only a part of the analyses. EPA's economic analyses are contained in a memorandum from EPA Region I's economist, dated November 5, 1985, and in a memorandum from EPA's Office of Air Quality Planning and Standards, dated April 10, 1986. These analyses show that, as measured by several conventional indicators, Arkwright is in healthy financial condition and has been so at least since 1983. Moreover, Arkwright has demonstrated the ability to pay substantial dividends to its parent company, to refinance and reduce its long-term debt, and to make major new investments in plant and equipment. Finally, although Arkwright did not show a new profit in 1982 or 1983, the company was profitable both in 1984 and in 1985, and the cash flow was sufficient to cover the annualized costs of emission controls for all three coating lines in those two years. Thus, even if profitability were the sole criterion, Arkwright's financial condition would not justify a compliance date extension to mid–1987.

Comment: One commenter took issue with EPA's statement that the revision request does not contain adequate support that a reformulation program or add-on control program is not feasible on coater number 5. The commenter stated that Arkwright on the whole, by implementing the requirements of the consent agreement, will achieve a 400 TPY reduction and will be able to achieve compliance with Regulation No. 19 by the use of the bubble provisions contained in Section 19.4. Further, the commenter stated that EPA is attempting to require reductions beyond those needed to comply with RACT.

Response: The commenter claims that Arkwright will be able to achieve compliance with Regulation No. 19 by bubbling. Presumably, the commenter feels that the reductions which will be achieved on coater numbers 6 and 7 will go beyond what is required and compensate for the excess emissions from coater number 5 on a daily basis. However, the SIP revision that has been submitted does not require excess reductions from line numbers 6 and 7 sufficient to compensate for the excess emissions from line number 5. Moreover, from calculations done by EPA, it does not appear that a plantwide bubble would be feasible based on controlling only coating line numbers 6 and 7.

As the commenter stated, Arkwright will achieve 400 TPY in reductions by implementing the control strategy outlined in the consent agreement. This reduction represents a 63% overall reduction in VOC emissions when compared to the 1984 emissions of 638 tons. Since all but one of the formulations reported to EPA on September 26, 1985 need reductions in excess of 69% to achieve compliance with the 2.9 lbs VOC/gallon coating (minus water) emission limitation, this control strategy seems inadequate.

Comment: Two commenters stated that coater number 4 has been physically removed from Arkwright's premises, and therefore, EPA's statement in the NPR that the revision request does not contain adequate support that a reformulation program or add-on control program is not feasible on that line is not relevant.

Response: EPA is aware that coater number 4 was removed from Arkwright's premises sometime after the SIP revision was submitted. The consent agreement which was submitted as a revision to Rhode Island's SIP, however, in no way reflects that this line has been removed or was scheduled to be removed. The consent agreement allows the coater to be used under certain conditions past the final compliance date of July 1, 1985. If this coater had used noncomplying coatings anytime after July 1, 1985, then this SIP revision would still lack the necessary documentation to justify why this should have been allowed to occur.

Comment: One commenter took issue with EPA's statement that Arkwright has not provided evidence of having made reasonable efforts to develop and install low solvent technology from the time of adoption of the state regulation. The commenter claims that EPA never asked for such evidence before the NPR was published. The commenter further states that the reformulation deadline for Arkwright has been advanced from June 30, 1988 to June 30, 1987 which meets the December 31, 1987 test for expeditiousness.

Response: EPA asked Arkwright for information regarding Arkwright's reformulation program in a June 24, 1985 letter. Therefore, the commenter's

statement that EPA never asked for evidence is incorrect.

In a letter dated July 7, 1986, Arkwright proposed to condense the schedule for its reformulation program to July 1987. However, this proposal has no bearing or relationship to the SIP revision submitted by the Rhode Island DEM. The SIP revision which EPA has acted on has a final date of June 1988. That date could only be changed had the Rhode Island DEM resubmitted the consent agreement prior to our rulemaking on that change. Therefore, the commenter's statement about the reformulation deadline is not relevant.

Comment: One commenter took issue with EPA's statement that EPA does not consider a schedule to install add-on control equipment extending 24 months beyond the July 1, 1985 final compliance date to be expeditious. The commenter stated that the criteria of the RACT study allowed for a two year pass if a company was losing money. The commenter stated that since Arkwright was losing money, Arkwright was entitled "by the rule" to have its pass until July, 1986. The commenter says that Arkwright agreed to start installing controls on January 1, 1986 which is six months before it had to and that the 18 month long schedule after January 1, 1986 was realistic based on Arkwright having installed another add-on device to its plant in 1984.

Response: The criteria of the contractor's RACT study does not allow a two year "pass" if a company is losing money. Secondly, the profitability criterion of the RACT study is not "the rule" by which Arkwright or EPA must abide. As mentioned above, the purpose of the RACT study was not to develop EPA policy or to develop EPA or State rules. The study was performed by a private contractor who had no authority to develop EPA rules. The purpose of the study was to provide technical documentation to the State. The State should have used that documentation consistently with EPA policy and procedures.

Finally, the length of the schedule for the installation of controls on line number 7 has not been shown to be expeditious. Arkwright has not provided the necessary economic justification to show that the schedule should have begun January 1, 1986. EPA's own economic analyses, discussed previously, indicate that Arkwright had the resources to begin installation of controls well before that date.

Comment: One commenter took issue with EPA's statement that the revision request does not contain adequate support that there are no existing low/no solvent formulations which can meet Arkwright's needs on coater number 5. The commenter stated that coater number 5's only coated product is unique and no existing low/no solvent formula for this product exists at Arkwright or anywhere else.

Response: EPA agrees that if a product is unique, there are probably no existing low/no solvent formulations for that product. However, this still does not address EPA's comment that Arkwright has not demonstrated that a reformulation program to develop a low/no solvent formulation for that product is not feasible on coater number 5.

Comment: One commenter took issue with EPA's statement that Arkwright has not provided adequate support to show that add-on control equipment is not feasible on coater number 5. The commenter states that the State of Rhode Island addressed this issue and dismissed the possibility of add-on controls on the basis of cost effectiveness.

Response: At the time the contractor completed its analysis of the cost of controls for Arkwright, Arkwright claimed that various assumptions used in the RACT study regarding heat recovery and oven exhaust recirculation were not feasible for its processes. Arkwright did not, however, submit any of its own control cost estimates in conjunction with these assertions in order to show what it would actually cost to install control equipment on its coating lines. Therefore, if these assertions were true, none of the costs in the study can be considered representative of what it would actually cost to install controls. Therefore, it is improbable that Rhode Island could have made an accurate assessment about the cost effectiveness of control equipment on line number 5 with any valid cost estimates for that coating line. Because no accurate assessment of the cost of control equipment existed for line number 5, EPA did its own cost analysis of control equipment on line number 5. EPA found that it would cost $1071/ton of VOC controlled to control line number 5 based on 1983 data. (The analysis is based on 1983 data because that is when Arkwright would have had to have begun the installation of add-on control equipment had it intended to comply with the July 1, 1985 final compliance date contained in Rhode Island's federally-approved SIP.) The costs determined by EPA in its analysis are substantially lower and more favorable than the costs originally determined by the contractor, even with the contractor's invalid assumptions. EPA believes that if the requirement for controls on line number 5 was dismissed for reasons of low cost effectiveness as the commenter asserts, then it was done unjustifiably because the proper documentation did not exist which will allow such a determination.

V. Final Action

EPA is today disapproving the consent agreement submitted by the DEM as a SIP revision request for Arkwright Incorporated in Fiskeville, Rhode Island for the following reasons:

1. The SIP revision request does not contain a demonstration that the requested compliance date extension to June 30, 1988 for reformulation of coatings on coater number 6 constitutes an expeditious schedule as required by the Clean Air Act (CAA) and Subsection 19.3.3 of the federally approved SIP for Rhode Island.

2. The SIP revision request does not contain a demonstration that Arkwright needs a two year compliance date extension until June 30, 1987 for the installation of add-on control equipment on coater number 7 as required by the CAA and Subsection 19.3.3 of the federally approved SIP for Rhode Island.

3. The SIP revision request does not contain a demonstration that an add-on control program or a reformulation program is not feasible on coater number 5 as required by Subsection 19.3.3 of the federally approved SIP for Rhode Island.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the Environmental Protection Agency, J.F.K. Federal Building, Room 2311, Boston, MA 02203.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (December 18, 1987). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Date: October 6, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart 00—Rhode Island

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2084 is amended by adding paragraph (a)(i) to read as follows:

§ 52.2084 Rules and regulations.

(a) Part D—Disapproval.

(1) On November 5, 1985, the Rhode Island Department of Environmental Management submitted a revision to the Rhode Island State Implementation Plan (SIP) for Arkwright Incorporated. This revision is an alternative reasonably available control technology determination for the control of volatile organic compounds (VOC) from three paper coating lines at Arkwright Incorporated's Fiskeville, Rhode Island facility. As a result of EPA's disapproval of this revision, the existing VOC rules applicable to Arkwright Incorporated and contained in the Rhode Island SIP remain in effect (Rhode Island Air Pollution Control Regulation No. 19 as approved by EPA in 40 CFR 52.2080(c)(19)).

[FR Doc. 87–24121 Filed 10–16–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendment; Public Reference Rooms Available

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends §§ 0.453 and 0.455 of the Commission's Rules, to include an updated listing of all public reference rooms available at the Commission and other locations at which records may be inspected. This action is needed to conform these requirements to current operations at the Commission and to allow easier access to Commission files, documents and records.

EFFECTIVE DATE: Effective on October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Information Resources Planning Division, Office of Managing Director, (202) 632–7513.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 18, 1987.

Released: October 5, 1987.

1. Sections 0.453 and 0.455 of the Commission's Rules require updating so that they conform to the current operation of the Commission.

2. This Order amends §§ 0.453 and 0.455 to remove listings of public reference rooms which are no longer in operation and to add listings of public reference rooms which are currently being used.

3. Authority for this action is contained in sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

4. Accordingly, *It is ordered, that* §§ 0.453 and 0.455 of the Rules is *Amended* in accordance with the attached, effective on the date of publication in the **Federal Register.**

5. Persons having questions on this matter should contact Terry Johnson at (202) 632–7513.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

List of Subjects in 47 CFR Part 0

Organization and functions, (Government agencies).

Rule Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

2. Section 0.453 is amended by revising paragraph (d) and adding new paragraphs (e) through (l) to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(d) *The Mass Media Bureau, Auxiliary Services Reference Room.* The following documents, files and records are available for inspection at this location.

(1) Station files containing applications for Remote Pickup, Aural STL/ICR, TV Auxiliary and Low Power Auxiliary Stations.

(2) International Broadcast applications and related files.

(3) FM Translator applications and related files.

(4) FM Booster station applications and related files.

(5) Cards summarizing the historical record of applications and dispositions through May 1982 are available for inspection.

(e) *The Mass Media Bureau, Enforcement Division Reference Room.* The following documents, files and records are available for inspection at this location.

(1) Station files containing Notice of Apparent Liability and Memorandum of Opinion and Order and related files.

(2) Congressional correspondence files and related materials.

(3) Network correspondence files and related materials.

(f) *The Common Carrier Bureau, Accounting and Audits Reference Room.* The following documents, files and records are available for inspection at this location.

(1) Files containing contracts between carriers and affiliates, accounts and subaccounts, pension filings, property records, disposition units, and depreciation rate filings.

(2) Computer II files and related materials.

(3) Official correspondence files which include waiver requests and interpretations and related files.

(4) Docket 86–111 Implementation filings containing Cost Allocation Manuals and related materials.

(g) *The Common Carrier Bureau, Domestic Facilities Reference Room.* The following documents, files and records are available for inspection at this location.

(1) Microwave Point-to-Point, Digital Electronic Message Service (DEMS), Multi-Point Distribution Service application files and related materials.

(2) Space and earth station files and related materials.

(3) Section 214 applications and related files.

(h) *The Common Carrier Bureau, Mobile Services Reference Room.* The following documents, files and records are available for inspection at two different locations. The Legal Branch is the responsible custodian for both locations.

(1) Station files containing a complete history of data submitted by the applicant that has been approved by the Commission which includes maps, diagrams, petitions, co-channel searches, and other background material.

(2) Pending files containing applications for additional facilities or modifications of existing facilities.

(3) Cellular Granted Station files and related materials.

(4) Pending cellular applications and related files.

(5) Petitions and related materials.

(i) *The Common Carrier Bureau, Industry Analysis Reference Room.* The following documents, files and records are available for inspection at this location.

(1) Files containing reports required by FCC Rules and Regulations, annual reports to stockholders, administrative reports, monthly bypass reports and related materials.

(2) Files containing reference material from major telephone companies.

(3) Files containing Local Exchange Rates and related files.

(j) *The Common Carrier Bureau Reference Room, Tariff Review Reference Room.* Contains currently effective tariffs filed by Communications Common Carriers pursuant to various FCC Rules and Regulations. Also available for review and copying are recent revisions to tariff filings and the Public Reference Room Log which is prepared daily and lists the tariff filings received the previous day.

(k) *The Office of Engineering and Technology, FCC Laboratory Reference Room.* The following documents, files and records are available for inspection at this location. Files containing approved applications for Equipment Authorization (Type accepted, type approved, certified and notified) and related materials are available for review. These files are available in the Commission's Laboratory in Columbia, Maryland.

(l) *The Private Radio Bureau Reference Room.* All authorizations in the Private Radio Services and files relating thereto, which includes Land Mobile, Microwave, Aviation Ground, Marine Coast applications. All of these materials are available in the Commission's offices in Gettysburg, Pennsylvania.

3. Section 0.455 is revised to read as follows:

§ 0.455 Other locations at which records may be inspected.

Except as provided in §§ 0.453, 0.457 and 0.459, records are routinely available for inspection in the offices of the Bureau or Office which exercises responsibility over the matters to which those records pertain (see § 0.5), or will be made available for inspection at those offices upon request. Upon inquiry to the appropriate Bureau or Office, persons desiring to inspect such records will be directed to the specific location at which the particular records may be inspected. A list of Bureaus and Offices and examples of the records available at each is set out below.

(a) *Mass Media Bureau* which includes the *Cable Television Branch, the Fairness/Political Programming Branch* and the *Audio Services Division.*

(1) Applications for broadcast authorizations and related files are available for public inspection in the Mass Media and Dockets Reference Room. See § 0.453(a)(2). Certain broadcast applications, reports and records are also available for inspection in the community in which the station is located or is proposed to be located. See §§ 73.3526 and 73.3527.

(2) Ownership reports filed by licensees of broadcast stations pursuant to § 73.3615.

(3) Network affiliation contracts between stations and networks (for television stations only).

(4) Contracts relating to network service to broadcast licensees filed on or after the 1st day of May 1969 under § 73.3613.

(5) Annual employment reports filed by licensees and permittees of broadcast stations pursuant to § 73.3612.

(6) Cable TV system reports filed by operators pursuant to § 76.403.

(7) Contract files which contain pledges, trust agreements, options to purchase stock agreements, partnership agreements, management consultant agreements, and mortgage or loan agreements.

(8) Rulings under the Fairness Doctrine and section 315 of the Communications Act, and related materials.

(9) Ruling lists which contain brief summaries of rulings.

(10) Files containing Station History cards for stations in existence prior to 1982.

(b) *Common Carrier Bureau* which includes the *Formal Complaints and Investigations Branch* and the *Informal Complaints and Public Inquiries Branch.*

(1) Annual reports filed by carriers under § 43.21 of this chapter.

(2) Annual reports filed by carriers under § 43.31 of this chapter.

(3) Reports on pensions and benefits filed by carriers under § 43.42 of this chapter.

(4) Reports of proposed changes in depreciation rates filed by carriers under § 43.43 of this chapter.

(5) Reports regarding division of international telegraph communications charges filed under § 43.53 of this chapter.

(6) Reports regarding services performed by telegraph carriers filed under § 43.54 of this chapter.

(7) Reports of public coast station operators filed under § 43.71 of this chapter.

(8) Valuation reports filed under section 213 of the Communications Act, including exhibits filed in connection therewith, unless otherwise ordered by the Commission, with reasons therefor, pursuant to section 213(f) of the Communications Act. See § 0.457(c)(2).

(9) A list of other reports filed by common carriers.

(10) Contracts and other arrangements filed under § 43.51 and reports of negotiations regarding foreign communication matters filed under § 43.52 of this chapter, except for those kept confidential by the Commission pursuant to section 412 of the Communications Act. See § 0.457(c)(3).

(11) Tariff schedules for all charges for interstate and foreign wire or radio communications filed pursuant to section 203 of the Communications Act, all documents filed in connection therewith, and all communications related thereto.

(12) All applications for common carrier authorizations, both radio and nonradio, and files relating thereto.

(13) All formal and informal complaints against common carriers filed under §§ 1.711 through 1.735 of this chapter, all documents filed in connection therewith, and all comunications related thereto.

(14) Files relating to submarine cable landing licenses, except for maps showing the exact location of submarine cables, which are withheld from inspection under section 4(j) of the Communications Act. See § 0.457(c)(1)(i).

(15) Annual employment reports filed by common carrier licensees or permittees pursuant to § 1.815 of this chapter.

(16) Enforcement proceedings and public inquiries and related materials.

(c) *Office of Managing Director.* (1) All minutes of Commission actions, containing a record of all final votes, minutes of actions and internal management matters as provided in § 0.457(b)(1) and (c)(1)(i). These records and files are available for inspection in the Agenda Branch.

(2) Files containing information concerning the history of the Commission's rules. These files are available for inspection in the Publications Branch.

(3) See § 0.443.

(4) Reports filed pursuant to Subpart E of Part 19 of this chapter and applications for inspection of such reports. See § 0.460(k).

(d) *Field Operations Bureau.* See § 0.457(f)(3) of this chapter. Commercial radio operator application files are available for inspection at this location.

(e) *Office of Engineering and Technology* which includes the Bureau's *Technical Library* containing technical reports, technical journals, and bulletins

of spectrum management and related technical materials.

(1) Experimental application and license files.

(2) The Master Frequency Records.

(3) Applications for Equipment Authorization (type accepted, type approval, certification, or advance approval of subscription television systems), following the effective date of the authorization. See § 0.457(d)(1)(ii). (Application files, technical journals and other technical materials are maintained at the Commission's Laboratory at Columbia, Maryland.)

(f) *The Commission's offices in Gettysburg, Pennsylvania.* See § 0.453(1) of the this chapter.

[FR Doc. 87-24080 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-97; RM-5598]

Radio Broadcasting Services; Laughlin, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Saguaro Broadcasting Co., allocates Channel 300C1 to Laughlin, Nevada, as the community's first local FM service. Channel 300C1 can be allocated to Laughlin in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Concurrence by the Mexican government has been received since the community is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

DATES: Effective November 30, 1987. The window period for filing applications will open on December 1, 1987, and close on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-97, adopted September 25, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding Laughlin, Nevada, Channel 300C1.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24083 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-95; RM-5648]

Radio Broadcasting Services; Anson, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C2 for Channel 252A at Anson, Texas, and modifies the construction permit of Station KTCE(FM) to specify operation on the new frequency, as requested by George L. Chambers. The substitution could provide Anson with its first wide coverage area FM service. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-95, adopted September 17, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by removing channel 252A and adding Channel 251C2 at Anson.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24082 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-18; RM-5616, RM-5880]

Television Broadcasting Services; Burlington, VT, Boston, MA; and Saranac Lake, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF-TV Channel 44+ to Burlington, Vermont, as that community's third commercial television service, at the request of Vermont Broadcasters. In addition, the offset on Channel *44 at Boston, Massachusetts must be changed from "plus" to "zero" in order to accomplish the Burlington allotment. We are also, allotting UHF-TV Channel 61— to Saranac Lake, New York, at the request of Citadel Communications Co., Ltd., licensee of Station WVNY(TV), Channel 22, Burlington, Vermont. As a first television service at Saranac Lake, a site restriction of 3.1 miles (5 kilometers) southeast of the city is required. The Burlington allotment requires a site restriction of 7.1 miles (11.4 kilometers) south of that community. Canadian concurrence has been obtained for the allotments and offset changes. Although the commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-18, adopted September 25, 1987 and

released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments, is amended under Massachusetts, by revising Channel *44+ to *44 for Boston; by adding in the entries for Burlington, Vermont, Channel 44+ and Saranac Lake, New York, Channel 61−.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24081 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–89; RM–5680]

Radio Broadcasting Services; Manchester, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 268A to Manchester, Tennessee, as that community's second FM service, at the joint request of Roger Howell Dotson and James Brittan Gilmore. A site restriction of 9.0 kilometers (5.6 miles) southwest of the city is required.With this action, this proceeding is terminated.

DATES: Effective November 30, 1987; The window period for filing applications will open on December 1, 1987, and close on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–89, adopted September 25, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 74—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Channel 268A at Manchester, Tennessee.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24078 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–519; RM–5423]

Television Broadcasting Services; Pullman, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 24+ to Pullman, Washington, as that community's first commercial television service, at the request of P-N-P Broadcasting. Concurrence by the Canadian government has been obtained. Although the Commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–519, adopted September 25, 1987 and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments, is amended by adding Channel 24+ at Pullman, Washington.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24077 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–79; RM–5642]

Radio Broadcasting Services; Block Island, RI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kolleen Dodge, allocates Channel 240A to Block Island, Rhode Island, as the community's second local FM service. Channel 240A can be allocated to Block Island in compliance with the Commission's minimum distance separation requirements, without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective November 30, 1987. The window period for filing applications will open on December 1, 1987, and close on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–79, adopted September 25, 1987, and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International

Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Block Island, Rhode Island, is amended by adding Channel 240A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24152 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-98; RM-5609]

Radio Broadcasting Services; Socastee, SC

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This document, at the request of Cat Communications and Joseph A. Booth, allocates Channel 258A to Socastee, South Carolina, as the community's first local FM service. Channel 258A can be allocated to the community in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective November 30, 1987. The window period for filing applications will open on December 1, 1987, and close on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-98, adopted September 25, 1987, and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for South Carolina is amended by adding Socastee, Channel 258A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24153 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-22; RM-5622]

Radio Broadcasting Services; Nacogdoches, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 299C2 for Channel 221A at Nacogdoches, Texas, and modifies the license of Station KTBC-FM to specify operation on the new frequency, at the request of Texan Broadcasting Co., Inc. A site restriction of 11.6 kilometers (7.2 miles) north of the city is required. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-22, adopted September 25, 1987, and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by adding Channel 299C2 and removing Channel 221A for Nacogdoches.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24154 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-96; RM-5656]

Radio Broadcasting Services; Morrisville, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 230A to Morrisville, Vermont, as that community's first FM service, at the request of Peter Morton. Concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective November 30, 1987. The window period for filing applications will open on December 1, 1987, and close on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-96, adopted September 25, 1987, and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Vermont, by adding Channel 230A to Morrisville.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24155 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-90; RM-5637]

Radio Broadcasting Services; Walla Walla, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 264C2 for Channel 265A at Walla Walla, Washington, and modifies the construction permit of Station KHSS(FM) to specify operation on the new frequency, as requested by Blanche Marie Hodgins. A fourth wide coverage area FM service could be provided to Walla Walla. A site restriction of 20.0 kilometers (11.8 miles) southwest of the community is required. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-90, adopted September 25, 1987, and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington by removing Channel 265A and adding Channel 264C2 at Walla Walla.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24156 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 52, No. 201
Monday, October 19, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 1010

Conduct of Employees; Cooperation with the Inspector General

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy proposes to amend the Department's Conduct of Employees regulations (10 CFR Part 1010) to clarify Department policy regarding cooperation required of Department employees in matters relating to official investigations by the Office of Inspector General.

DATES: Comments must be received not later than November 18, 1987.

ADDRESS: Address comments to the Office of Assistant General Counsel for General Law, GC–43,. U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. The envelope must also display the following designation: "Revision of Conduct of Employees Regulations."

FOR FURTHER INFORMATION CONTACT:

Thomas C. Buchanan, Attorney-Advisory, Office of Assistant General Counsel, for General Law, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–1522

Sanford J. Parnes, Counsel to the Inspector General, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4393.

SUPPLEMENTARY INFORMATION:

I. Background

Section 208 of the Department of Energy Organization Act (Pub. L. 95–91) provides for the establishment of an Office of Inspector General within the Department. It also provides that the Inspector General shall be responsible for conducting investigative activities relating to the promotion of economy and efficency in the administration of, or the prevention or detection of fraud or abuse in, programs and operations of the Department. To facilitate such activities, it is considered appropriate that the subject of DOE employees' duty to cooperate with the Office of Inspector General should be addressed in the regulations governing conduct of DOE employees. Accordingly, the Department proposes to amend Part 1010 of title 10, Code of Federal Regulations, by adding a new section (§ 1010.217) entitled, "Cooperation with the Inspector General." The new section will make reference to the other sections of the regulations that have a bearing on conduct of employees in this area. Propsoed § 1010.217 does not confer new authority upon the Office of Inspector General or any other DOE official; rather, it clarifies the policy and authority established by existing statutes, regulations, Federal case law, and Departmental directives.

II. Opportunity for Public Comment

Section 501 of the DOE Organization Act provides that if the Secretary determines that a substantial issue of fact or law exists or that a proposed rule is likely to have a substantial impact on the Nation's economy or on large number of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided. DOE has concluded that this proposed regulation does not involve a substantial issue of fact or law and that it will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Therefore, DOE does not plan to hold a public hearing. Interested persons are invited to submit written comments with respect to the proposed regulation set forth in this notice. Three copies of written comments should be submitted by [November 18, 1987] as indicated in the "Address" section of this preamble.

III. Review Under Executive Order 12291

It has been determined that the proposed regulation is not a "major rule" within the meaning of Executive Order 12291 (February 17, 1981) because the amendment will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

IV. Review Under the Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (Pub. L. 96–354), it is hereby certified that the proposed regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. It is related solely to internal agency organization, management, or personnel.

V. Review Under the National Environmental Policy Act

DOE has determined that this proposal does not constitute a major Federal action significantly affecting the quality of the human environment.

VI. Review Under the Paperwork Reduction Act

This proposal does not impose a "collection of information" requirement, as defined in 44 U.S.C. 3502(4).

List of Subjects in 10 CFR Part 1010

Conflict of interest conduct of employees.

In consideration of the foregoing, it is proposed to amend Part 1010 of Title 10 of the *Code of Federal Regulations*, as set forth below:

Issued in Washington, DC on *October 5, 1987.*

John S. Herrington,

Secretary of Energy.

PART 1010—CONDUCT OF EMPLOYEES

1. The table of contents is amended by adding the following at the end of Subpart B:

1010.217 Cooperation with the Inspector General (applicable to FERC).

2. The authority citation for Part 1010 is revised to read as follows:

Authority: Secs. 208, 601–608, 644, Pub. L. 95–91, 91 Stat. 575–577, 591–596, 599 (42 U.S.C. 7138, 7211–7218, 7254); sec. 522, Pub. L. 94–163, 89 Stat. 961 (42 U.S.C. 6392); sec. 308, Pub. L. 95–39, 91 Stat. 189 (42 U.S.C. 5816a); 5 U.S.C. 301 and 303 (a); 5 U.S.C. (app. 4) 207 (a); U.S.C. 201–209; E.O. 11222, as amended by E.O. 12565.

3. Part 1010 is amended by adding the following new section:

§ 10.10.217 Cooperation with the Inspector General (applicable to FERC).

(a) Upon the duly authorized request of a representative of the Office of the Inspector General, a DOE employee shall provide information requested by the representative pertaining to the operations and programs of the Department. In responding to such a request, an employee shall testify or respond to questions, under oath if specified by an investigator who is an employee of the Office of Inspector General, and, where appropriate, furnish a signed statement; except that, an employee is not required to respond to questions or to testify if the answers or testimony may subject the employee to criminal prosecution. If the employee's statements or information gained by reason of such statements cannot be used against the employee in a criminal prosecution, failure to respond to such a request for information may lead to disciplinary action.

(b) Employees have a duty to expose fraud, waste, inefficiency, or other forms of wrongdoing on the part of DOE employees, contractors, subcontractors, grantees, or other recipients of DOE financial assistance, or their employees. All alleged violations of these regulations shall be referred to the Counselor and the Inspector General, and the Counselor shall review and determine appropriate action in accordance with § 1010.502 (c). Reviewing officials shall report actual or alleged employee misconduct to the Counselor and the Inspector General (§ 1010.104(b) (6)). Notwithstanding any other provision in these regulations, DOE employees should, when appropriate, report directly to the Office of Inspector General any information concerning wrongdoing by Department employees, or DOE contractors, subcontractors, grantees, or other recipients of DOE financial assistance, or their employees.

[FR Doc. 87–24060 Filed 10–16–87; 8:45 am]

BILLING CODE 6450–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 741

Reserves; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposal rulemaking.

SUMMARY: The NCUA Board requests comment on whether it should redefine the "loans and risk assets" that determine Federal and federally-insured state credit union reserve requirements. Currently, most nonloan assets and certain insured and guaranteed loans are excluded. The Board requests comment on whether all loans and assets should be included. Comments received will assist the Board in determining whether to issue a proposed rule.

DATE: Please comment on or before February 5, 1988.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street NW., Washington, DC. 20456.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Bradford, Chief Economist, D. Michael Riley, Director, Office of Examination and Insurance, or Robert M. Fenner, General Counsel, at the above address, or telephone (202) 357–1100 (Dr. Bradford), (202) 357–1065 (Mr. Riley), or (202) 357–1030 (Mr. Fenner).

SUPPLEMENTARY INFORMATION:

Background

Current Statutory Reserve Requirements

Section 116(a) of the Federal Credit Union Act (12 U.S.C. 1762(a)) requires that Federal credit unions set aside a certain percent of gross income at the end of each accounting period as a Regular Reserve. The amount of reserve transfer required is based on a two-tiered formula, according to the size or age of the credit union; (1) A credit union in operation for less than four years or having assets of less than $500,000 must set aside: (a) 10 percent of gross income until the Regular Reserve equals 71/2 percent of total outstanding loans and risk assets, and then (b) 5 percent of gross income until the Regular Reserve equals 10 percent of loans and risk assets. (2) A credit union in operation for more than four years and having assets of $500,000 or more must set aside: (a) 10 percent of gross income until the Regular Reserve equals 4 percent of loans and risk assets, and then (b) 5 percent of gross income until the Regular Reserve equals 6 percent of loans and risk assets. There is no time limit for achieving these 10 percent and 6 percent reserve goals.

The term "total outstanding loans and risk assets" is defined in § 700.1(j) of NCUA's Regulations (12 CFR 700.1(j)) as all assets except such excluded assets as: Cash, deposits in other insured depositories (including amounts above the $100,000 insurance limit), investments in Treasury and agency securities, loans to other credit unions, government-insured or -guaranteed loans (including student loans), share-secured loans, common trust investments, prepaid expenses, accrued interest and fixed assets. As a result of these exclusions, the definition is essentially limited to nonguaranteed and noninsured loans.

Federally-Insured State-Chartered Credit Unions

Section 201(b)(6) of the Federal Credit Union Act (12 U.S.C. 1781(b)(6)) provides that federally-insured state credit unions must maintain such reserves as the NCUA Board "may require * * * to assure that all insured credit unions maintain rgular reserves which are not less than those required under Title I of the Federal Credit Union Act." This provision is implemented by the standard insurance agreements that NCUA enters into with all federally-insured state credit unions and by § 741.6(a) of the NCUA's regulations, both of which require that federally-insured state credit unions meet, at a minimum, the statutory reserve requirements imposed on Federal credit unions by Section 116 of the Act. Thus, the proposal to redefine risk assets affects federally-insured state-chartered credit unions as well as Federal credit unions.

Corporate Central Credit Unions

Corporate credit unions (both Federal and federally-insured state-chartered) are subject to separate reserve requirements pursuant to Part 704 of NCUA's regulations (12 CFR Part 704) and are unaffected by this proposal.

Review of Current Methods

The nature of a credit union's balance sheet has changed dramatically since the original reserve procedures were established. At that time, consumer loans made up almost all of a credit union's assets and thus the credit union made reserve transfers on what were essentially total assets. At present, a substantial part of most credit unions' balance sheets is in items not considered by definition to be risk assets. These items are not included in

the assets that determine minimum statutory reserve goals. Events of recent years have shown, however, that substantial losses can occur on many of these assets. For example, credit unions have suffered substantial losses on mutual funds and government securities trading, on deposits in other financial institutions, and on sales of buildings, real estate, computers, and other fixed assets.

Also, a review of historical data shows that reserves as a percentage of assets have declined over the last several years.

The following table presents the ratios for both Federal and federally-insured state credit unions.

RATIO OF REGULAR RESERVES (INCLUDES ALLOWANCE FOR LOAN LOSSES) TO TOTAL ASSETS

Year	Federal credit union	Federally-insured State credit unions
1982	3.5	4.0
1983	3.2	3.8
1984	3.3	3.9
1985	3.2	3.6
1986	3.0	3.4

The ratios in the above table exclude undivided earnings and other revocable reserves. If these other net worth (capital) accounts were included, the ratios would be approximately doubled. The trends, however, would not be different.

Finally, a report issued by the credit union industry-sponsored National Credit Union System Capitalization Commission concluded that equity capital should be increased in credit unions. Inasmuch as the current ratio of loans to total assets for all federally-insured credit unions is 56.6%, redefining risk assets to include nonloan assets would clearly help to build credit union capital.

Request for Comment

For the reasons addressed above, the NCUA Board proposes to redefine the loans and risk assets that determine statutory reserve requirements. Comments are requested on the following specific issues:

1. Should all assets be considered risk assets? While it is recognized that degree of risk varies for different assets, all assets carry some risk. Assets that are nearly risk free, e.g., vault cash and Regulation D reserves, are likely to be immaterial in relation to a credit union's total assets. Recognizing this, and in the interest of simplicity, should the definition include all assets?

2. In the alternative, should certain specific assets be excluded? If so, which assets and why?

3. Broadening the definition of reservable assets will temporarily reduce the after-reserve income of some credit unions by placing them in a higher percentage transfer bracket for current accounting periods. A review of June 30, 1987, call report data indicates that 3,040 (or 21%) federally-insured credit unions are currently using retained earnings in whole or in part to meet reserve transfer requirements. If the definition of risk assets were immediately changed to include all assets, it is estimated by NCUA staff that an additional 3,206 (22%) federally-insured credit unions would face increased reserve transfers, requiring those credit unions to either reduce expenses or dividends or use retained earnings. A number of options are available, however, to prevent adverse effects. The NCUA Board has the authority, pursuant to section 116(b) of the Federal Credit Union Act (12 U.S.C. 1762(b)), to decrease reserve requirements on a temporary basis in individual cases. In the alternative, an across-the-board delayed effective date or gradual phase-in might be utilized. The Board requests comment on what specific action should be taken to avoid unreasonable temporary reductions in after-reserve income.

4. If credit unions are required to reserve against additional assets, should they be allowed to charge losses other than loan losses to the regular reserve? Should any limits be placed on these additional charges?

5. Federal credit union accounting procedures call for the creation of contra-assets, or valuation allowance accounts, for projected losses on loans and for marking to the lower of cost or market on mutual funds. This prevents the true value of these assets from being overstated on the credit union's statement of financial condition. The allowance account for loan losses is considered, however, in determining the credit union's reserve position relative to its statutory goal. If investments are treated as risk assets, will it be advisable to establish similar consideration for mutual funds, in order to prevent double reserving? Also, should valuation allowance requirements be established for other types of assets?

Initial Regulatory Flexibility Analysis

The following information is provided in accordance with 5 U.S.C. 603.

1. This action is being considered in order to ensure consistency between credit union reserves against losses and the risk inherent in the current asset structures of credit unions, and also to improve equity capital in credit unions.

2. The legal bases for this request for comment are Sections 116 and 201 of the Federal Credit Union Act (12 U.S.C. 1762, 1781).

3. This proposal would, if implemented, affect all federally-insured credit unions by expanding the asset base that determines reserve goals of credit unions. Such a change would affect some credit unions by temporarily increasing the amount of income required to be transferred to the regular reserve each accounting period, which would reduce the amount of income available to meet expenses, to pay dividends, and for other purposes. At the same time, the changes would increase equity capital in credit unions and should ultimately strengthen the credit union system. The change would not impose new recordkeeping or reporting requirements on credit unions.

4. The changes under consideration would not overlap or duplicate any existing Federal rules.

5. Inasmuch as the reserve transfer requirements (as a percentage of gross income) and reserve goals (as a percentage of risk assets) are fixed by statute, it does not appear that differing requirments would be appropriate for small credit unions.

Accordingly, the NCUA Board requests comments on the issues identified above and any other issues relevant to credit union reserve requirements.

By the NCUA Board on the 8th of October, 1987.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 87-24129 Filed 10-16-87; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-26, Notice No. SC-87-5-NM]

Special Conditions; Airbus Industrie Model A320 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus Industrie Model A320 airplane. This airplane will have novel and unusual design features when compared to the state of

technology envisioned in the airworthiness standards of Part 25 of the Federal Aviation Regulations (FAR). This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of Part 25.

DATE: Comments must be received on or before January 19, 1988.

ADDRESSES: Comments of this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-26, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-26. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gregory J. Holt, Standardization Branch, ANM-113, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68996, Seattle, Washington 98168; telephone (206) 431-1918.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-26." The postcard will be date/time stamped and returned to the commenter.

Background

On February 7, 1984, Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, applied for type certification of their Model A320 by the Direction Generale de l'Aviation Civile (DGAC) under the provisions of Joint Airworthiness Requirements-25 (JAR-25) and by the FAA under the provisions of § 21.29 of the FAR and an existing bilateral airworthiness agreement with the government of France.

The bilateral agreement was reached in 1973 to facilitate French acceptance of aeronautical products exported from this country and reciprocal U.S. acceptance of such products imported from France. The bilateral agreement provides, in part, for U.S. acceptance of certification by the DGAC that the Model A320 complies with the applicable U.S. laws, regulations and requirements, or with the applicable French laws, regulations and requirements, plus any additional requirements the U.S. finds necessary to ensure that the Model A320 meets a level of safety equivalent to that provided by the applicable U.S. laws, regulations and requirements. The DGAC has elected to certify that the Model A320 complies with the French laws, regulations and requirements, plus any necessary special requirements.

The DGAC has advised that the French laws, regulations and requirements applicable to the Model A320 (i.e. the French type certification basis) consist of JAR-25 with changes 1 through 10 thereto and including the French National Variants, the Orange Papers 84/1, 84/2, and 84/3, Joint Airworthiness Requirements-All Weather Operation (JAR-AWO), and Special Conditions and interpretations applied specifically to the Model A320. JAR-25 is a document developed jointly and accepted by the airworthiness authorities of various European countries, including France, for type certification of large airplanes. JAR-25 is based on Part 25 of the FAR, however there are certain specified differences in the requirements of the two documents. In addition, JAR-25 also contains requirements, known as National Variants, that are peculiar to individual accepting countries. "Orange Papers" are interim amendments which are eventually consolidated as a change to JAR-25. Special conditions are also applied where JAR-25 does not contain adequate or appropriate safety standards due to novel or unusual design features. In order to preclude confusion, these special conditions will be referred to herein as the "French Special Conditions." JAR-AWO contains additional requirements applicable to all weather operations.

The Airworthiness Authorities of Germany, England, and the Netherlands are participating with France in a joint certification process between these countries with the objective of issuing their Type Certificates simultaneously in 1988. U.S. type certification of the A320 is expected to follow shortly after the European certification.

Based on the February 7, 1984, date of application for type certificate, the applicable U.S. laws, regulations and requirements, as established under the provisions of §§ 21.17 and 21.29 of the FAR, are Part 25 of the FAR with Amendments 25-1 through 25-56 thereto and the special conditions proposed in this notice. When the applicable regulations do not contain adequate or appropriate safety standards because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 of the FAR in order to establish a level of safety equivalent to that established in the regulations.

A comparison will be made of the French type certification basis and the above noted U.S. laws, regulations and requirements, including the respective French and U.S. special conditions. Based on this comparison, the FAA will prescribe any additional requirements that are necessary to ensure that the Model A320 meets a level of safety equivalent to that provided by the U.S. laws, regulations and requirements.

Noise certification is beyond the scope of the bilateral agreement; however, French test data are accepted by separate arrangement. The French noise certification basis is their "Arrete" (order) dated November 26, 1981 (ICAO Annex 16). The U.S. noise certification basis for the Model A320 is Part 36 of the FAR with Amendments 36-1 through 36-12 thereto and any subsequent amendments adopted prior to the date on which the U.S. type certificate is issued. French noise certification test data will be reviewed by the FAA for compliance with the U.S. noise certification basis.

The Model A320 must also comply with the engine emission requirements of Special Federal Aviation Regulation No. 27 (SFAR 27) with Amendments 27-1 through 27-5 thereto and any subsequent amendments adopted prior to the date on which the U.S. type certificate is issued. Engine emission requirements are also beyond the scope of the bilateral agreement; however, certification of compliance by the DGAC will be accepted by separate arrangement. Lastly, the statutory

provisions of Pub. L. 92–574, "Noise Control Act of 1972," require that the FAA issue a finding of regulatory adequacy pursuant to section 611 of that Act.

The French type certification basis, together with the additional requirements discussed above, Part 36 of the FAR, SFAR 27, and the Noise Control Act of 1972, will comprise the U.S. type certification basis for the Model A320.

A320 Design Features

General

The Model A320 airplane presented for U.S. type certification is a short to medium-range, twin-turbofan, transport category airplane with a seating capacity of 120 to 179 passengers, a maximum takeoff weight of 158,730 pounds, and a maximum operating altitude of 39,000 feet.

The structure of the A320 is generally of conventional design and construction, but with considerable use of composite materials. Elements of primary structure (the fin and horizontal tailplane) are constructed of composites as well as components such as flaps, spoilers, ailerons, engine cowls, and the leading and trailing edge access panels. In addition, the structural design makes limited use of overspeed protection and active controls in the form of load alleviation.

The model A320 utilizes fly-by-wire (FBW) flight controls for the elevators, ailerons, spoilers, tailplane trim, slats and flaps, speed brakes, trim in yaw, and engine control. The aerodynamic surfaces are positioned relative to the pilot's command by electronic signals sent via airplane wiring from the flight control computers to hydraulic actuators. Conventional mechanical control is provided for the rudder and tailplane trim hydraulic actuators. Should a short-term interrupt occur in the electronic flight controls, flight could be maintained for a period of time through the use of mechanical control of rudder and tailplane trim.

Normal electrical power is supplied by a constant frequency generator on each engine. An auxiliary power unit (APU) driven electrical generator is also available. A continuous source of electrical power is required by the A320 fly-by-wire flight controls. In the event of the loss of normal electrical power, a ram air turbine (RAT) is automatically deployed. The RAT provides hydraulic power which is used by a constant frequency generator to supply electrical power. Until the RAT powered generator comes on line (approximately 7 seconds), the flight control system is powered from the airplane's batteries. RAT deployment may also be selected manually by pushing an electrical switch.

Hydraulic power to the flight control system is simultaneously provided by three independent hydraulic systems. Functions are shared among these systems in order to ensure airplane control in the event of loss of one or two systems. Two of the systems are pressurized by variable displacement pumps driven by the engine accesory gearbox, and the third system is powered by an electrically driven pump or by the RAT hydraulic pump in case of loss of normal electrical power.

The airplane has two basic engine configurations: the SNECMA-General Electric CFM56–5 engines, and the International Aero Engines' (IAE) V2500 engines. Both engine types have a takeoff rating of 25,000 pounds of thrust (sea level, static). The engine control system consists of a dual channel Full Authority Digital Engine Control (FADEC) mounted on the fan case of each engine. Each FADEC interfaces with various airplane computer systems. The FADEC provides gas generator control, engine limit protection, power management, thrust reverser control, and engine parameter inputs for the flight deck displays. In addition to control of the engines from the flight deck through changes in power lever position, an autothrust mode is provided which commands thrust changes directly to the FADEC without a corresponding change in power lever position. In this mode of operation, the position of the power lever sets the upper limit for thrust, except when alpha floor is reached. At alpha floor, the engines are commanded to full thrust, regardless of lever position, to provide high angle-of-attack (AOA) protection. The autothrust mode can be disengaged by pushing a button on the power lever. The engine FADEC and associated airplane related systems form the complete propulsion control system.

Pitch and roll control inputs are made through flight deck side stick controllers mounted on the lateral consoles of the pilot and copilot positions, in place of central control columns. The flight instruments are displayed on six cathode ray tube (CRT) displays. Two CRT's are mounted directly in front of both the pilot and copilot and display primary flight instruments and navigational information. The other two CRT's are located in the center of the instrument panel and display engine parameters, warnings, and system diagnostics.

The proposed type design of the A320 contains novel or unusual design features not envisioned by the applicable Part 25 airworthiness stdandards and therefore special conditions are considered necessary in the following areas:

Operation Without Normal Electrical Power

In the A320, a source of electrical power is required by the electronic flight control system. Service experience with traditional airplane designs has shown that the loss of electrical power generated by the airplane's engines is not extremely improbable. The electrical power system of the A320 must therefore be designed with backup or standby electrical sources of sufficient reliability and capacity to power essential loads in the event of loss of normally generated electrical power. The need for electrical power for electronic flight controls was not envisioned by Part 25 since in traditional designs, cables and hydraulics are utilized for the flight control system. Therefore, Special Condition 1(a) is proposed.

Electronic Flight Control System (EFCS) Failure and Mode Annunciation

The A320 flight control system architecture utilizes redundant elements as well as alternate operational modes to deal with losses of equipment and/or signal interfaces, and to achieve a high level of availability.

Existing Part 25 has been considered adequate for stability and automatic flight systems in traditional airplane designs since those designs did not have submodes of operation (they are either on or off), the airplane handling qualities were adequate with the systems either on or off, and the systems were not actively participating in load relieving functions. These rules are not sufficient for the A320 since they do not address differences in handling qualities and levels of envelope protection between submodes of operation and because elements of the automatic system must remain on in order to maintain safe flight and landing. Therefore, Special Condition 1(b) is proposed.

Command Signal Integrity

Command and control of the control surfaces will be achieved by fly-by-wire systems which will utilize electronic interfaces (AC, DC, or digital data buses). These interfaces involve not only the commands to the control surfaces, but all the control feedbacks and sensor input signals as well. These signal paths, as well as the digital electronics that manage them, can be

susceptible to spurious signals which may cause unacceptable or unwanted control responses. These spurious signals may originate from electromagnetic or electrostatic sources or from failures of subsystems in the control loop. Therefore, special designs are needed to maintain the integrity of the fly-by-wire interfaces to an immunity level equivalent to that of traditional hydro-mechanical designs. In addition, similar to the conventional steel cable controls, routing of wire bundles must provide separation and redundancy to ensure maximum protection from damage due to a common cause. Therefore, Special Condition 1(c) is proposed.

Powered Control Integrity

In the A320, a broad scope of flight essential control functions are hydraulically powered; e.g., active controls for gust alleviation, full time automatic trim, active stall protection, active load factor protection, and active overspeed protection. A loss in the hydraulic Power Control Actuator (PCA) capability, whether this is a partial or a total loss, can affect the performance of these flight essential control functions which, in turn, may affect the airplane's operational limitations. Such systems traditionally utilize redundancy and separation in the routing of hydraulic lines to comply with the regulations. As a benefit of the fly-by-wire design, the A320 will also permit modification of the flightcrew commanded inputs to the surfaces based on the flight computers' assessment of the airplane's current state to maintain a safe airplane response. To achieve this response, it is necessary to ensure that the supply of hydraulic power is continuously available for operation of the flight essential control systems. Therefore, Special Condition 1(d) is proposed.

Maximum Control Surface Displacement

In a conventional airplane, pilot inputs directly affect control surface movement (both rate and displacement) for a given flight condition. The pilot provides only one of several inputs to the control surfaces of the A320, and it is possible that the pilot control displacements specified in § 25.331(c)(1) of the FAR may not result in the maximum displacement and rates of displacement of the A320 elevator. The intent of these noted rules may not be satisfied if literally interpreted. Because of certain bank angle and roll rate limits provided by the EFCS, it may not be possible to obtain full aileron deflections at the design maneuvering speed (V_A). On the other hand, the EFCS may, under some conditions, produce higher aileron spoiler or elevator deflections than the pilot input is capable of providing. Therefore, Special Condition 1(e) is proposed.

Active Controls

The A320 has a full time electronic flight control system in the pitch, yaw, and roll axes. There is automatic trim of the horizontal stabilizer. There is also manual control of trim through a mechanical link. The rudder is conventional in design. The response of the airplane to pilot commands and turbulence differs from a conventional airplane. The pitch control law for most of the flight envelope is the "C-Star" Law. The airplane will have neutral static longitudinal stability in its normal flight envelope. The elevator will function automatically to assist holding attitude during coordinated turns up to 33° bank angle, to provide pitch attitude protection, to provide stall protection, and +2.5g, −1g envelope protection. An overspeed protection function is also provided to protect the airplane against speed overshoots above V_{MO}/M_{MO}. This overspeed function phases in a pull up maneuver above the overspeed warning. The spoilers and ailerons are used for a gust load alleviation function, attitude hold up to 33° bank angle, positive spiral stability above 33° bank angle, turn coordination which limits sideslip and lateral load factor, and bank angle protection over 65°. In addition, the elevator performs a trim function which will include correction of the Load Alleviation Function (LAF) effects. The effect of electronic flight controls, including failures, on the structure is not addressed by the regulations for transport airplanes, therefore Special Condition 2 is proposed.

Full Authority Digital Engine Control System (FADEC)

The FADEC is an electronic engine control, and even though the engine it is controlling will be subjected to all of the applicable requirements of Part 33 of the FAR, the overall control system reliability is not adequately addressed by the existing regulations. Unlike conventional hydromechanical controls for which existing regulations were developed, the electronic control does not exhibit a "wear out" characteristic but instead exhibits an in-service failure rate which may be somewhat random with time. Therefore, endurance tests or other "mechanical" type evaluations and subsequent tear downs do not establish any significant degree of implied or inherent reliability, as has been the case with mechanical systems evaluated in accordance with Part 33. In addition, several components essential to the overall evaluation of propulsion system reliability for the A320 are airplane components not considered in the engine certification program. The propulsion certification and installation requirements of Parts 33 and 25 of the FAR do not contain adequate standards by which to determine acceptable reliability of a FADEC system installed on a transport airplane. Therefore, Special Condition 3(a) is proposed.

Engine Thrust Levers During Autothrust System (ATS) Operation

The A320 ATS interfaces with the FADEC to command thrust changes by a direct input to the FADEC. This approach bypasses the traditional aisle stand clutchpack driven thrust levers and, as a result, the thrust lever position may not correspond to the current engine thrust level with the ATS engaged, since the thrust levers do not move with changes in engine thrust. Thrust changes are detected by the pilot through the electronic instrument displays. In ATS operation, the pilot selected position of the thrust levers, in the range of Maximum Continuous Thrust (MCT) to idle, sets the upper limit of the ATS thrust demand authority. Changes in the lever position by the pilot change the upper limit but do not affect the autothrust function activation/deactivation.

The ATS function is automatically deactivated by the FADEC whenever one of the thrust levers is positioned beyond the MCT gate (detent). The pilot can also deactivate the ATS by pushing the instinctive disconnect on the thrust levers.

There is also an alpha floor protection function. This function automatically applies full rated thrust when a high AOA is reached. This immediate application of full thrust on both engines does not involve thrust lever movement.

This design is unique to the A320 and Part 25 does not contain appropriate safety standards for such a design. Therefore, Special Condition 3(b) is proposed.

Display of Powerplant Parameters

The Electronic Centralized Aircraft Monitoring System (ECAM) does not continuously display the powerplant instruments required by § 25.1305 of the FAR under all flight conditions.

The A320 Electronic Instrument System (EIS) displays some of the required engine instrument parameters on a shared basis with other powerplant or airplane system displays. Engine instruments located on the lower ECAM display unit are called up automatically

when one engine parameter exceeds a specified operating condition or limit. However, the engine display may be superseded by other airplane system displays, such as hydraulic system or electrical system schematics, or by fuel system or APU instrument displays, according to a pre-determined display priority among the various ECAM display modes. The required fuel quantity indications for each tank are not permanently displayed. Total fuel on board is displayed on the upper ECAM display unit to the right of the main engine parameters. Individual tank quantities can only be called up by replacing the current system display on the lower ECAM display unit with the fuel system page. The A320 ECAM does not have a compacted format for display of powerplant instruments after the loss of one display unit as in some previously certified electronic instrument systems. In place of a compacted format, information from the lower ECAM display unit may be manually reconfigured onto one of the navigation display units by selecting the appropriate position on the ECAM/ND transfer switch. The engine/warning image from the upper ECAM display unit is automatically displayed on the remaining screen.

It is apparent from the airplane designs from which FAR Part 25 was based that the existing rules were intended to be complied with by continuously displaying the powerplant instruments for all ground and flight operations. The EIS display of engine instruments which is implemented on the A320 was not envisioned by the current rules. Therefore, Special Condition 3(c) is proposed.

Protection from Lightning and Unwanted Effects of Radio Frequency (RF) Energy

The use of fly-by-wire designs to command and control engines and flight control surfaces increases the airplane's susceptibility to lightning and RF energy sources external to the airplane. The airworthiness regulations do not provide adequate requirements for protection from lightning and unwanted effects of external RF energy.

Lightning interaction with an airplane can result in numerous problems. Physical damage (direct effects) can result from a lightning attachment to the airplane. Such damage is characterized by burning, eroding, and blasting, and is the consequence of either the extreme heat loading and accompanying acoustic shock wave or deforming by magnetic forces from the high current component of lightning. An additional effect (indirect) results from the fast changing electrical and magnetic fields produced by the high currents of a direct or near strike. These fields can couple voltage transients into the airplane wiring and subsequently reach the electrical and electronic systems within.

RF energy also has the potential to cause adverse and potentially hazardous effects on fly-by-wire systems if design measures are not taken to ensure the immunity of such systems. This is particularly true with the trend towards increased power levels from ground based transmitters and the advent of space and satellite communications. This problem is compounded by the fact that no universally accepted guidance exists to define a minimum threat to which civilian airplane system installations should be hardened.

The A320 is being designed with only electrical interfaces between crew inputs and: (1) The elevator, aileron, and spoiler flight control surfaces, and (2) the engines. These interfaces, and the interconnection among the electronic subsystems controlling these functions, can be susceptible to disruption to both command/response signals and the operational mode logic as a result of electrical and magnetic interference. Traditional airplane designs have utilized mechanical means to connect the primary flight controls and the engine to the flight deck. This traditional design results in control paths which are substantially immune to the effects of lightning strike and effects of RF energy. A special condition is required to ensure that critical and essential systems be designed and installed to preclude component damage and system upset or malfunction due to both direct and indirect effects of lightning, and the unwanted effects of RF energy. Therefore, Special Condition 4 is proposed.

Flight Characteristics

The A320 will employ an EFCS which has no direct coupling from controllers to surfaces in pitch (elevator) and roll; it has response-command control laws in these axes for primary operating modes, and it has designated back-up control laws that are utilized when the normal operating state is unavailable. With full augmented airplanes like the A320, almost all the flying qualities characteristics are independent of each other, and individual characteristics cannot, therefore, be used as predictors of acceptable flying qualities in other areas.

1. Flight Characteristics Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases

The A320 EFCS technology has outpaced existing regulations (written essentially for unaugmented airplanes with provisions for limited ON/OFF augmentation). Interpretive material for § 25.672(c) of the FAR needs to be provided to aid in evaluating EFCS failure cases. Therefore, Special Condition 5(a) is proposed.

2. Longitudinal Stability

The A320 and similar airplanes with command-type control systems lacking airspeed or AOA feedback will not pass the current Part 25 demonstration for "static longitudinal stability," even though the basic airframe may have constant Mach gust stability. In the "normal" flight regime, these airplanes have short-term flight path stability, tending to hold zero pitch rate or 1–g normal to the flight path when stick force is zeroed at a new speed away from initial trim. Benefits of such a command-control system are quick, accurate pitch response, minimization of pitch overshoots, and lack of transients associated with gear/flap/speed brake extension and thrust changes. Pilot adaptation and pilot ratings have been favorable for airplanes of this type for most of the flight envelope and flight phases. Because the A320 does not meet the Part 25 requirements for static longitudinal stability, and since the pitch damping is also defined by the control laws, the simple requirement for "heavy damping" may not be appropriate for this design. Therefore, Special Condition 5(b) is proposed.

3. Lateral-Directional Stability

Because of the A320 roll axis design feature in which aileron force commands roll rate, a stabilized constant heading sideslip will result in zero aileron forces, which does not comply with § 25.177 of the FAR. This condition will exist for bank angles up to 33°. Therefore, Special Condition 5(c) is proposed.

4. Control Surface Awareness

With a response-command type flight control system and no direct coupling from cockpit controller to control surface, the pilot is not aware of actual surface position utilized to fulfill the requested demand. Some unusual flight condition, arising from atmospheric conditions and/or airplane or engine failures, may result in full or near-full surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting,

piloted or auto-flight system control of the airplane might be inadvertently continued in such a manner to cause an unsatisfactory stability or performance characteristic. Therefore, Special Condition 5(d) is proposed.

Flight Envelope Protection

1. General Limiting Requirements

The manufacturer has elected to develop extensive flight envelope protection features integral to the basic EFCS design. Envelope protection parameters include angle-of-attack (AOA), normal load factor, bank angle, pitch angle, and speed. To accomplish this envelope limiting, a significant change (or multiple changes) occurs in the EFCS control laws as the limit is approached, or exceeded. When EFCS failure states occur, envelope protection features can likewise either be modified or, in some cases, eliminated. The current regulations were not written with comprehensive envelope-limiting systems in mind. Therefore, Special Condition 6(a) is proposed.

2. Angle-of-Attack Limiting

The A320 design incorporates a low speed protection feature (alpha limit) which cannot be overridden by the flightcrew. When operating normally, the low speed protection system limits the ability to demonstrate steady speeds lower than, essentially, 1.06 times the 1–g stall speed (V_{SIG}), i.e., at coefficients of lift (C_L) less than the maximum aerodynamic coefficient of lift (C_{LMAX}). Airbus Industrie believe that the strict application of § 25.103 of the FAR will impose a takeoff and landing performance penalty on the A320 in comparison with conventional-control airplanes.

Stalling speed (V_S) is defined as $V_C = V_{CLMAX}/\sqrt{N_{ZW}}$, where N_{ZW} is the normal flight path load factor. The speed is determined from the certification stalling maneuver with all aspects of the EFCS operating normally, except auto thrust is disengaged or overridden and a higher than production AOA is set so that aerodynamic C_{LMAX} can be achieved. The flight characteristics at the AOA for C_{LMAX} must be suitable in the traditional sense at forward and aft center of gravity (CG) in straight and turning flight at IDLE power. Although for a normal production EFCS and steady full aft stick this AOA for C_{LMAX} cannot be achieved, the AOA can be obtained momentarily under dynamic circumstances and deliberately in a steady state sense with some EFCS failure conditions.

A re-definition of the stalling reference speed for the A320 will have impact on various performance and flying qualities requirements currently prescribed in Part 25. Areas of re-evaluation are principally: (1) Factors for trim speed and speed range requirements for flying qualities tests, and (2) the operating speed selection for performance conditions and tests. Therefore, Special Condition 6(b) is proposed.

3. Normal Load Factor (g) Limiting

The A320 flight control design incorporates normal load factor limiting on a full-time basis that will prevent the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. The limiting feature is active in all normal and some alternate flight control modes and cannot be overridden by the pilot. This feature is unique in that traditional airplanes are limited in the pitch axis only by the elevator surface position limit, which is normally sized for adequate controllability and maneuverability which may allow limit structural design values to be exceeded. Therefore, Special Condition 6(c) is proposed.

4. High-Speed Limiting

The longitudinal control law design of the A320 incorporates an overspeed protection system in the normal mode; this would prevent the pilot from inadvertently or intentionally exceeding a speed equivalent to the maximum speed for stability characteristics (V_{FC}) or attaining the maximum demonstrated flight diving speed (V_{DF}). The regulations do not contain requirements for a high speed limiter which might preclude or modify flying qualities assessments in the overspeed region. Therefore, Special Condition 6(d) is proposed.

5. Pitch and Roll Limiting

Airbus Industrie proposes to implement pitch and roll attitude limiting via the EFCS normal modes that will prevent the pilot from commanding pitch attitudes greater than approximately +35°, −15° body attitude and roll angles greater than ±65°. In addition, positive, artificial spiral stability is introduced for roll angles greater than 33° for speeds below the maximum operating limit speed (V_{MO}) or the maximum operating limit Mach (M_{MO}) and 0° for speeds above V_{MO}/M_{MO}. At speeds greater than V_{MO} and up to V_{DF}, maximum aileron force will command only 40° maximum bank. Conventional airplanes are not limited in pitch and roll. While limits may provide certain benefits such as protection from upsets, these limits should not restrict normal and emergency maneuvering. Therefore, Special Condition 6(e) is proposed.

Side Stick Controllers

1. Pilot Strength

The A320 design incorporates side stick controllers for pitch and roll in lieu of conventional wheel controls. The temporary and prolonged force requirements of § 25.143(c), and related flying qualities force requirements in other paragraphs, are valid for wheel controls only. Appropriate force requirements must be established for side stick controllers. Therefore, Special Condition 7(a) is proposed.

2. Controller Coupling

The side stick controllers are not mechanically interconnected, as in conventional airplanes; instead, electronic coupling is used to meet the requirements of § 25.671 of the FAR. Therefore, Special Condition 7(b) is proposed.

3. Pilot Control

Side stick controllers for A320 pitch and roll are a new controlling method for transport airplanes. The regulations do not address these types of airplane controlling devices. Therefore, Special Condition 7(c) is proposed.

4. Autopilot Quick-Release Control Location

The A320 autopilot quick-release is located on the side stick controllers. Since the A320 does not have a yoke, the A320 cannot literally comply with the regulations. Therefore, Special Condition 7(d) is proposed.

Flight Recorder

The A320 utilizes a fly-by-wire flight control system. The pitch and roll control surfaces are positioned relative to the pilot's command by electronic signals transmitted via airplane wiring to hydraulic actuators. In order to achieve the same degree of correlation on recorded commands as is obtained in traditional designs, the flight deck commanded inputs, as well as the resulting control system responses, will need to be recorded. Furthermore, in order to achieve the intent of § 25.1459(a)(4) of the FAR, the digital flight data recorder will need to provide a means to verify that data are being encoded onto the storage medium. Therefore, Special Condition 8 is proposed.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in

accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are isued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these feature on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus Industrie Model A320 series airplane.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

1. Electronic Flight Controls

(a) Operation Without Normal Electrical Power

In lieu of compliance with § 25.1351(d) of the FAR, it must be demonstrated by test or combination of test and analysis that the airplane can continue safe flight and landing with inoperative normal engine generated electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines.

Discussion. This special condition requires that the emergency electrical power system be designed to supply: (1) Electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal electrical power system; (2) electrical power required for continued safe flight and landing; and (3) electrical power required to restart the engines. For compliance purposes, a test demonstration of the loss of normal engine generated power is to be established such that:

1. The failure condition should be assumed to occur during night instrument meteorological conditions (IMC) at the most critical phase of flight relative to the electrical power system design and distribution of equipment loads on the system.

2. After the unrestorable loss of the source of normal electrical power, it must be possible to restart the engines and continue operations in IMC until visual meteorological conditions (VMC) can be reached. (A reasonable assumption can be made that turbojet transport airplanes are capable of achieving flight into VMC conditions 30 minutes after experiencing the failure).

3. After 30 mintues of operation in IMC, the airplane should be demonstrated to be capable of continuous safe flight in VMC for a time duration equal to the maximum flight duration capability of the airplane together with a safe approach and landing in VMC conditions.

(b) Electronic Flight Control System (EFCS) Failure and Mode Annunciation

(1) In lieu of compliance with § 25.672(c) of the FAR, it must be shown that after any single failure or combination of failures of the flight control system that are not shown to be extremely improbable—

(i) The airplane, when the failure or malfunctions occur within the operational flight envelope, has the following characteristics:

(A) Suitable handling qualities;

(B) The airplane is able to withstand the induced loads multiplied by a 1.5 safety factor;

(C) V_D/M_D is not exceeded.

(ii) The airplane has suitable handling qualities for continued safe flight and landing.

(2) In addition to compliance with § 25.672 of the FAR—

(i) If the design of the electronic flight control system or any other automatic or power-operated system has submodes of operation that significantly change or degrade the flight or operating characteristics of the airplane, a means must be provided to indicate to the crew the current submode of operation. Crew procedures must be available to ensure safe and proper operation for the annunciated flight control submode; and

(ii) The total loss of the electronically signaled flight control system (including its electrical or hydraulic power supplies), must be designed to be extremely improbable if its loss would prevent continued safe flight and landing.

Discussion. Suitable handling qualities, for the purposes of special condition 1(b)(1) above, are those determined from compliance with special condition 5a, *Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases.* Note that Special Condition 5a is also proposed in lieu of § 25.672(c).

(c) *Command Signal Integrity*

In addition to compliance with § 25.671 of the FAR, it must be shown that each Power Control Actuator (PCA) receives command signals that cannot be altered, unintentionally, or that the altered signal characteristics are such that:

(1) Stable gain and phase margins are maintained for all aerodynamically closed-loop flight control systems.

(2) The control authority characteristics are not degraded to a level that will prevent continued safe flight and landing. Failures which would otherwise prevent the airplane from continued safe flight and landing need not be considered.

Discussion. It should be noted that the proposed wording "command signals that cannot be altered unintentionally" is used in this special condition to emphasize the need for design measures to protect the fly-by-wire control system from the effects of electromagnetic interference (EMI) and radio frequency energy (RF), fluctuations in electrical power, accidental damage caused by uncontained rotary machinery debris (engine burst is addressed in § 25.903(d) of the FAR), environmental factors such as temperature, local fires, and any other spurious signals or disruptions that affect the command signals as they are being transmitted from their source of origin to the PCA's.

(d) Power Control Integrity

In addition to compliance with the requirements of § 25.671 of the FAR, the airplane control system must be designed to allow for continued safe flight and landing after any failure condition to the flight essential powered system which is not shown to be extremely improbable, unless that failure condition in itself would prevent continued safe flight and landing.

(e) Maximum Control Surface Displacement

(1) In lieu of compliance with § 25.331(c)(1) of the FAR, the airplane is assumed to be flying in steady level flight (point A_1, § 25.333(b)) and, except as limited by pilot effort in accordance with § 25.397(b), the pitching control is moved to obtain the extreme positive (nose up) pitching acceleration. The maximum possible elevator deflections commanded by the EFCS must be considered during this maneuver, using the most adverse system tolerances. The dynamic response or, at the option of the applicant, the transient rigid body response of the airplane must be taken into account in determining the tail load. Airplane loads which occur subsequent to the normal acceleration at the center of gravity exceeding the maximum positive limit maneuvering load factor, n, need not be considered. It should also be established that maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electric rather than mechanical combination of different inputs) are acceptably accounted for, up to V_D/M_D.

(2) In lieu of compliance with § 25.349(a) of the FARA, the following conditions, speeds, spoiler and aileron deflections (except as the deflections may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the required aileron and spoiler deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b). It should also be established that maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electric rather than mechanical combiantion of different inputs) are acceptably accounted for, up to V_D/M_D.

(i) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated. The investigation must include the maximum possible aileron and spoiler deflections commanded by the EFCS, the using the most adverse system tolerances.

For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(ii) At V_A, sudden deflection of the aileron and spoiler to the maximum possible positions are assumed.

(iii) At C_C, the aileron and spoiler deflections must be that required to produce a rate of roll not less than that obtained in paragraph (ii).

(iv) At V_D, the aileron and spoiler deflections must be that required to produce a rate of roll not less than one-third of that in paragraph (ii).

Discussion: These special conditions require the manufacturer to consider the critical deflection rates and deflections of the control surfaces, considering the entire A320 flight control system, as opposed to only the pilot's input, when demonstrating compliance with §§ 25.331 and 25.349 of the FAR.

2. Active Controls

In addition to compliance with the structural requirements of Subparts C and D of the FAR, the airframe must be designed to meet the criteria in this special condition. These critieria are divided into two groups:

Basic Criteria

These criteria are considered necessary to define a certification basis. The objective of these criteria is to control, in a consistent way, the risk of catastrophic structural failure associated with each failure condition.

Supplementary Criteria

The purpose of the supplementary criteria is to examine areas where the basic criteria may not be sufficient and to check certain situations which are considered realistic but not covered in the normal requirements. The precise need for additional requirements associated with these criteria and their level of severity will depend on the sensitivity of the airplane to these conditions and on the conclusion thast these problems may show the airplane to have a lower level of safety compared to an airplane without active flight controls. These supplementary criteria will form the basis of required investigations to be performed by the manufacturer and will be evaluated by the certification authorities.

(a) *Basic Criteria*

(1) *With the system operative—(i) Determination of limit loads.* Limit loads must be derived in all normal operating configurations of the systems from all deterministic limit load conditions specified in Part 25, taking into account any special behavior of such systems or associated functions or any effect on the structural performance of the airplane which may occur up to limit loads. In particular, any significant nonlinearity (aerodynamic, aeroelastic, rate of displacement of control surfaces, and any other system limit nonlinearities) must be accounted for when deriving limit loads from limit conditions.

(ii) *Load conditions defined on a statistical basis.* In cases where Mission Analysis is used for continuous turbulence, all the systems failure conditions associated with their probability must be accounted for in a rational or conservative manner in order to ensure that the probability of exceeding the limit load is not higher than the prescribed value of the current requirement.

(iii) *Strength requirements.* The airplane must meet the strength requirements of Part 25 (static strength, residual strength) using the appropriate factors specified in Part 25 to derive ultimate loads from the limit loads defined above.

(iv) *Nonlinearities above limit load.* When some systems present a nonlinear behavior limit loads (e.g., saturation), an increase of the safety factors may be found necessary in order to ensure a protection of the airplane beyond the limit conditions comparable to an airplane not equipped with such systems, taking into account the physical limitations of the airplane established in a conservative way. It must also be shown that, between limit load and 1.5 times limit load, nonlinearities in the load alleviation function, including aeroelastic effects, will not result in a smaller load increment than the increment achieved at limit load due to load alleviation.

(2) *With the system in failure conditions.* (i) Warnings must be provided to annunciate the existence of failure conditions which affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable operational limitations. Failure conditions which affect the structural capability of the airplane and for which there is no suitable compensating operational limitation need not be annunciated to the flightcrew, but must be detected before the next flight.

(ii) In addition, the following conditions must be met for all failure conditions not shown to be extremely improbable and which have an impact on structural performance.

(A) *At the time of occurrence.* Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads and speeds occurring at the time of failure and immediately after failure.

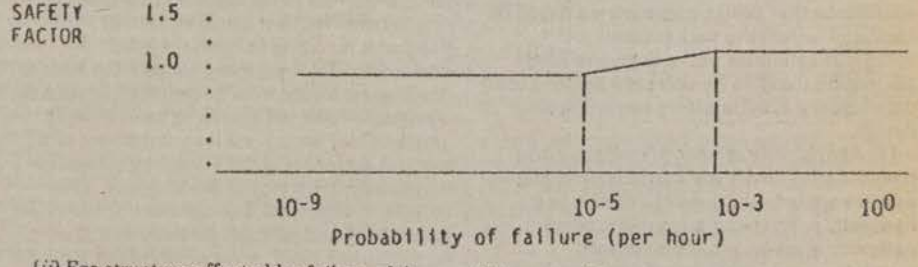
(*1*) The airplane must be able to withstand these loads, multiplied by a 1.5 factor of safety to obtain ultimate loads. These loads must also be included in the damage tolerance evaluation required by § 25.571(b) of the FAR if the failure condition is probable.

(*2*) A flutter and divergence justification must be made in accordance with paragraph (2)(ii)(B) applied to failure conditions not shown to be extremely improbable. For failure conditions which result in speed increases beyond V_C/M_C, freedom from flutter and divergence must be shown to the speeds indicated by paragraph (2)(ii)(B), with V_C/M_C replaced by the maximum speed obtained during the above realistic scenario.

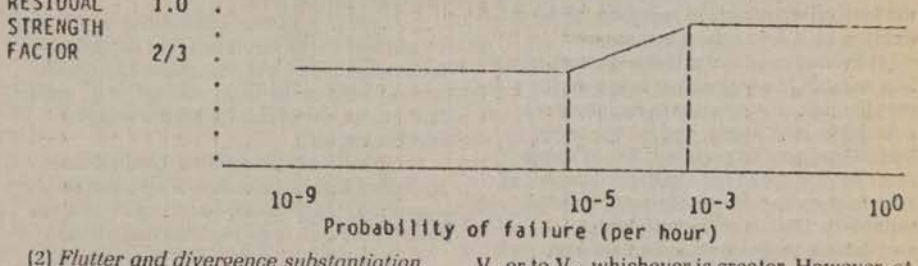
(B) *For continuation of the flight.* The new airplane configuration and associated flight limitations, if any, must be taken into account and the justification must cover:

(*1*) *A static and residual strength substantiation.* These investigations must take into account the loads induced by the failure conditions (resulting from any single or combination of system failures not shown to be extremely improbable) in those cases where these loads will continue up to the end of the flight, in combination with the deterministic limit conditions specified in Part 25 (as maneuvers, discrete gust, design envelope for continuous turbulence, etc.).

(*i*) For the static strength substantiation, each part of the structure affected by failure of the EFCS must be able to withstand the above specified loads multiplied by a factor between 1 and 1.5 depending on the probability of the failure conditions. The factors shown in the following figure may be used.

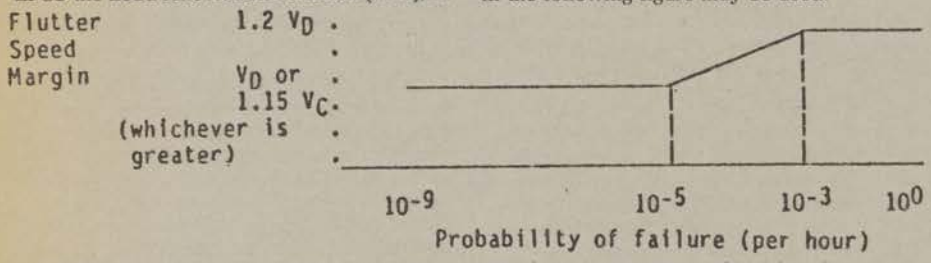


(*ii*) For structure affected by failure of the EFCS and with structural damage in combination with the EFCS failure conditions, a factor must be applied for the same purpose to the loads used for the justification of the airplane without system failure condition. In any case, the residual strength level must be at least 1 g flight loads combined with ⅔ of the gust or maneuver conditions specified in § 25.571(b) of the FAR. The residual strength factors shown in the following figure may be used.



(2) *Flutter and divergence substantiation.* Due to High Speed Protection, the speed margin between V_C and V_D, compared with an airplane without such protection, may be reduced. Therefore, compliance with § 25.629(d) must be shown to a speed of 1.15 V_C or to V_D, whichever is greater. However, at altitudes where V_D is limited by Mach number, compliance may be shown to M_D or $M_C + .05$, whichever is greater. The failsafe flutter speed at any altitude need not exceed the value of V_D that would result from

compliance with § 25.335(b) without high speed protection. In addition, a margin up to 20% above V_D/M_D, depending on the probability of failure, must be provided for any system failure condition affecting the EFCS the Load Alleviation Function (LAF), or High Speed Protection function. For probable failure conditions which affect the High Speed Protection function, this value of V_D/M_D must be the particular value defined for this failure condition. The margins shown in the following figure may be used.



(3) *Damage propagation substantiation.* If the time likely to be spent in this failure condition is not small compared to the damage propagation period, or if the loads induced by the failure condition may have a significant influence on the damage propagation, then the effects of the particular failure condition must be addressed and the corresponding inspection intervals adjusted to adequately cover this situation.

(C) *Known failure conditions.* The airplane may be considered to be airworthy in a system failure condition which reduces the structural performance if the effects of flight and operational limitations, when combined with those of the failure condition, allow the airplane to meet all Part 25 structural requirements. The consequences of subsequent system failures must also be considered.

(b) Supplementary Criteria

(1) *Realistic gust fields.* Realistic representations of gust and turbulence must be accounted for. This is both to provide confidence that design assumptions based on idealized turbulence will not lead to optimistic estimates of the degree of load alleviation likely to be achieved and to avoid unnecessary constraints on control system design.

(2) *Availability of control authority and power supply to control systems.* Adequate power supply to the control systems (e.g., hydraulic power) and adequate control authority must be available for load alleviation and flight control under realistic conditions of severe turbulence. Maneuvers, gusts, and combinations of maneuvers and gusts must be considered.

(3) *Effects of control input on loads in turbulence.* The effects of loads induced by control activity during flight in turbulence on the LAF effectiveness in reducing the total loads in turbulence must be assessed.

(4) *System reliability.* If the systems prove less reliable in service than assessed for certification, adjustments in maintenance schedules, load levels, and/or operating limitations may be required. The systems must be monitored for a sufficient period of time to substantiate an adequate level of reliability. Details of the reliability verification program must be based on system criticality and the degree of conservatism inherent in the system design and analysis. Periodic checks for system reliability may be required throughout the service life of the systems.

(5) *Test demonstration.* The purpose of the test demonstration is to show that the airplane meets the regulatory requirements by carrying out performance and fault tests at selected conditions. The tests shall include, in addition to those normally required by Part 25, the following simulator, ground, and flight demonstrations:

(i) The system effectiveness in alleviating loads must be demonstrated by flight tests for selected conditions within the airplane design envelope. Airplane response to oscillatory as well as hardover failure must be similarly verified by tests, unless these conditions are shown to be extremely improbable.

(ii) Maneuvering to limit load factors or load factors which produce light buffeting at both low speed and high speed must be explored for system effectiveness.

(iii) If the airplane is proposed to be dispatched with failures in the EFCS (MEL configurations), the tests described in paragraph (i) above must include selected conditions in the MEL configuration.

(iv) An investigation must be made to determine that EFCS signals at various frequencies will not cause structural feedback resulting in control system instability. The frequency range must include the highest and lowest frequencies (including system failures not shown to be extremely improbable) which result in movement of a control surface and the lowest structural or rigid body frequency of the airplane. The effects of structural damage considered under § 25.571(b) and (e) must be included. The investigation must cover all points in the v-n envelope.

The following definitions apply to the terms as they are used in this special condition.

1. *Structural performance.* Capability of the airplane to meet the requirements of Part 25 relating to structures.

2. *Flight limitations.* Limitations which can be applied to the airplane flight conditions following an in-flight occurence and which are included in the flight manual, (e.g., speed limitations, avoidance of severe weather conditions, etc.).

3. *Operational limitations.* Limitations, including flight limitations, which can be applied to the airplane operating conditions before dispatch (e.g., payload limitations).

4. *Probabilistic terms.* The probabilistic terms (probable, improbable, extremely improbable) used in this special condition should be understood as defined in AC 25.1309–1.

5. *Failure condition.* The term "failure condition" should also be understood as defined in AC 25.1309–1, but this special condition applies only to system failure conditions which have a direct impact on the structural performance of the airplane (e.g., failure conditions which induce loads or change the response of the airplane to imputs such as gusts or pilot actions).

Discussion: The criteria in this special condition address only the direct structural consequences of the system's responses and performances and therefore cannot be considered in isolation but must be included in the overall safety evaluation of the airplane. The presentation of these criteria may, in some instances, duplicate standards already established for this evaluation. However, this presentation is used: (1) To keep explicit the links between the different items to be covered and the continuity with former requirements; and (2) to place in a proper context the specific additional structural requirements. These criteria are applicable to primary structure which, if failed, would prevent continued safe flight and landing. It is advisable to use the same basis for the whole of the structure, but some relief may be considered for cases leading to structural failures which would not prevent continued safe flight and landing.

(c) Dive Speed Definition

In lieu of compliance with § 25.335(b)(1) of the FAR, if the flight control system includes functions which act automatically to initiate recovery before the end of the 20-second period specified in § 25.335(b)(1) the greater of the speeds resulting from the following conditions may be used

(i) From an initial condition of stabilized flight at V_C/M_C, the airplane is upset so as to take up a new flight path 7.5° below the initial path. Control application, up to full authority, is made to try and maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5 g (0.5 g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. The speed increase occurring in this maneuver may be calculated, if reliable or conservative aerodynamic data is used. Power, as specified in § 25.175(b)(1)(iv) of the FAR, is assumed until recovery is made, at which time power reduction and the use of pilot controlled drag devices may be assumed.

(ii) From a speed below V_C/M_C, with power to maintain stabilized level fight at this speed, the airplane is upset so as to accelerate through V_C/M_C at a flight path 15° below the initial path (or at the steepest nose down attitude that the system will permit with full control authority if less than 15°).

Recovery may be initiated two seconds after operation of high speed, attitude, or other alerting system by application of a load factor of 1.5 g (0.5 g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which is authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

Discussion: Special Condition 2c above has

been adapted from DGAC Special Condition SC-A 2.2.3 for the A320 dated April 4, 1986.

3. Engine Controls and Monitoring

(a) Full Authority Digital Engine Control System (FADEC)

In addition to compliance with the requirements of §§ 25.901 and 25.903 of the FAR, the overall propulsion control system on the A320, including the FADEC and associated electronic equipment, must be substantiated to have an availability of the functions essential for safe flight and landing, in the installed configuration, at least equivalent to those of a conventional propulsion control system of a similar type encompassing a hydromechanical engine control system (HMC) which has been certified to the standards of Parts 33 and 25 of the FAR.

Discussion: The intent of this proposal is to ensure that the FADEC system provides at least the same degree of reliability as current conventional controls by prescribing standards consistent with the "extremely improbable" criteria for multiple failures per § 25.901(c) and as contained in guidance material associated with § 25.1309(b)(1) of the FAR. The inherent level of design integrity for a conventional propulsion control is demonstrated by an in service loss of thrust control of approximately once per 100,000 hours of operation. A similar level of loss of thrust control must be demonstrated for a FADEC considering all dispatchable states. Sources of information which are necessary in order to establish a meaningful determination of reliability include assessing service experience of like controls in similar environments, testing (e.g., bench, flight, etc.) and analysis. Service experience of a complex system such as FADEC could involve similar units in a similar installation, military experience of like installations, or possibly identical installations on other aircraft. In each of these cases, the type and degree of exposure would depend upon various factors such as serivce history of previous systems produced by the manufacturers involved, or the number and type of failures observed during the service evaluation.

(b) Engine thrust levers during autothrust system operation

In lieu of compliance with § 25.1143(c) of the FAR, it must be established by analysis and test that the A320 automatic thrust system:

(1) Provides adequate cues for the flightcrew to monitor thrust changes during normal operation and to recognize a malfunction or inappropriate mode of operation and take corrective action.

(2) Provides a means for the flightcrew to disengage or otherwise override the automatic thrust system and regain manual control of engine thrust through normal motion of the thrust levers as defined in § 25.779(b) of the FAR.

(3) Provides visual and aural alerts during disengagement.

(4) Must function reliably without exceeding the approved engine limits.

(c) Display of powerplant parameters

In addition to compliance with the requirements of §§ 25.1305, 25.1321, and 25.1337 of the FAR—

(1) The required powerplant instrument displays must be arranged and isolated from each other so that the failure or malfunction of any system or component that affects the display or accuracy of any propulsion system parameter for one engine will not cause the permanent loss of display or adversely affect the accuracy of any parameter for the remaining engines.

(2) No single fault, failure or malfunction, or probable combinations of failures, shall result in the permanent loss of display, or in the misleading display, of more than one propulsion unit parameter for a single engine.

(3) Combinations of failures which would result in the permanent loss of required powerplant instrument displays for more than one engine must be improbable.

(4) Combinations of failures which would result in the hazardously misleading display of any parameter for more than one engine must be extremely improbable.

(5) Each powerplant instrument required for certification that is not continuously displayed must have an operating limit or threshold established so that the appropriate engine, auxiliary power unit (APU), or fuel system instruments are automatically displayed for any condition that requires immediate crew awareness. In addition, those instruments must be manually selectable by the flightcrew.

(6) For designs incorporating shared displays, the engine instruments must have display priority for concurrent propulsion and airplane system failures, unless it is shown that crew attention to another propulsion or airplane system display is more critical for continued safe operation of the airplane. It must also be established that failure to concurrently display the engine instruments does not jeopardize the safe operation of the airplane.

(7) Propulsion system parameters essential for determining the health and operational status of the engines and for taking appropriate corrective action, including engine restart, must be automatically displayed after the loss of normal electrical power.

(8) If individual fuel tank quantity information is not continuously displayed, there must be adequate automatic monitoring of the fuel system to alert the crew of both system malfunctions and abnormal fuel management.

Discussion: Section 25.1305 specifies the required powerplant instruments. Section 25.1321(c)(2) requires that powerplant instruments vital to the safe operation of the airplane must be plainly visible to the appropriate crewmembers, and § 25.1309(a) requires that the powerplant instruments function properly and perform their intended functions under any foreseeable operating condition. The instruments function properly if they accurately display the required parameter. The instruments are considered to be performing their intended function if they are displayed when the crew needs them to determine the health or operational status of the engines, or to monitor correct fuel system operation. Any foreseeable operating condition encompasses the entire range of normal airplane and engine operation, as well as engine or airplane system failures. Vital powerplant instruments are not plainly visible to the appropriate crewmembers if they are not being displayed.

4. Protection from Lightning and Unwanted Effects of Radio Frequency (RF) Energy

(a) In the absence of specific requirements for protection from the unwanted effects of RF energy, the following apply:

(1) Each system, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to externally radiated electromagnetic energy

Discussion: It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Based on surveys and analysis of existing RF emitters an adequate level of protection exists when compliance with the above special condition is shown to paragraphs 1 or 2 below:

1. A minimum RF threat of 200 volts per meter average electric field strength from 10 KHZ to 20 GHZ.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated:

Frequency	Average (V/m)	Peak (V/m)
10 KHz-3 MHz	100	100
3 MHz-30 MHz	1,000	1,000
30 MHz-100 MHz	100	100
100 MHz-200 MHz	200	3,000
200 MHz-1 GHz	2,000	6,000
1 GHz-2 GHz	2,000	14,000
2 GHz-8 GHz	600	14,000
8 GHz-10 GHz	2,000	14,000
10 GHz-40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatability Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a separation distance between the airplane and emitters as follows In the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters, for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case levels to which an airplane would be exposed in the operating environment.

(b) In addition to compliance with the requirements of §§ 25.581 and 25.954 of the FAR concerning lightning protection—

(1) Each system, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

(2) Systems, whose failure to function properly would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operation conditions, must be designed and installed to ensure that they can perform their intended function after the airplane is exposed to lightning.

Discussion: The current airworthiness regulations address lightning protection for fuel vapor ignition (§ 25.954) and for damage caused to the structural and skin details of the airplane (§ 25.581). However, application of the design requirements of these rules does not provide an equivalent level of safety to fly-by-wire applications when compared to the traditional designs which utilize mechanical means to connect the flight controls and the engines to the flight deck.

The following "threat definition" is proposed as a basis to use in demonstrating compliance with the proposed special condition.

The lightning current waveforms defined below, along with the voltage waveforms in JAR AMC–S5 or Advisory Circular (AC) 20–53A, will provide a consistent and reasonable requirement which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The individual systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

In addition to the use of the Severe Strike/Restrike, Component A or D, to address the direct effects per AC 20–53A, the possible effects or upset that an avionics system or data transmission might exprience needs to be identified. To evaluate the induced effects to these systems, three considerations are required:

1. *First return stroke.* (Severe Strike—Component A or Restrike—Component D). As identified above, this external threat needs to be evaluated to obtain the resultant internal threat and to verify the level is sufficiently below the equipment "hardness" level; then

2. *Multiple stroke flash.* A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis need to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as single Component A followed by 23 randomly spaced restrikes of ½ magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation. And,

3. *Multiple burst.* In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up to 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The indiviudal "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), Restrike/"Swept Stroke" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential polynominal equations:

$$i(t) = I_0 (e^{-at} - e^{-bt})$$

where;

t = time in seconds,

i = current in amperes, and

Severe Strike (Component A)	Restrike (Component D)	Multiple Stroke (½ Component D)	Multiple Burst (Component H)
I_0, amp = 218,810	109,405	54,703	10,572
a, sec^{-1} = 11,354	22,708	22,708	187,191
b, sec^{-1} = 647,265	1,294,530	1,294,530	19,105,100

These equations produce the following characteristics:

	Severe Strike (Component A)	Restrike (Component D)	Multiple Stroke (½ Component D)	Multiple Burst (Component H)
I_0, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics:				
i_{peak} =	200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$ (amp/sec) =	1.4 x 10^{11} @t = 0+sec	1.4 x 10^{11} @t = 0+sec	0.7 x 10^{11} @t = 0+sec	2.0 x 10^{11} @t = 0+sec
di/dt, (amp/sec) =	1.0 x 10^{11} @t = .5 us	1.0 x 10^{11} @t = .25 us	2.0 x 10^{11} @t = .25 us	.....
Action Integral (amp^2 sec) =	2.0 x 10^6	0.25 x 10^6	.0625 x 10^6	.....

5. Flight Characteristics

(a) Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases.

In lieu of compliance with § 25.672(c) of the FAR, a handling qualities rating system will be used for evaluation of EFCS configurations resulting from single and multiple failures not shown to be extremely improbable. The handling qualities ratings are:

(1) Satisfactory

Full performance criteria can be met with routine pilot effort and attention;

(2) Adequate

Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention;

(3) Controllable

Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope and/or reconfiguration so that the handling qualitites are at least Adequate.

Handling qualities will be allowed to progressively vary with failure state, atmospheric disturbance level, and flight envelope. Specifically within the normal flight envelope, the pilot-rated handling qualities must be satisfactory/adequate in moderate atmospheric disturbance for probable failures, and must not be less than adequate in light atmospheric disturbance for improbable failures.

(b) Longitudinal stability

In lieu of compliance with the requirements of §§ 25.171, 25.173, 25.175, and 25.181(a) of the FAR, the airplane must be shown to have suitable dynamic and static longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(c) Lateral-Directional Stability

(1) In lieu of compliance with § 25.171 of the FAR, the airplane must be shown to have suitable static lateral-directional stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(2) In lieu of compliance with §§ 25.177(b) and 25.177(c), the following applies: In straight, steady, sideslips (unaccelerated forward slips) the rudder control movements and forces must be substantially proportional to the angle of sideslip, and the factor of proportionality must lie between limits found necessary for safe operation throughtout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has suitable indication, there must be enough bank and lateral control deflection and force accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

(d) Control Surface Awareness

In addition to compliance with §§ 25.143, 25.671, and 25.672 of the FAR, suitable flight control position annunciation must be provided to the flightcrew when a flight condition exists in which near-full surface authority (not crew commanded) is being utilized.

Note.—The term suitable also indicates an appropriate balance between nuisance and necessary operation.

6. Flight Envelope Protection

In the absence of specific requirements for flight envelope protection, the following apply:

(a) General Limiting Requirements

(1) Normal Operation

(i) Onset characteristics of each envelope protection feature must be smooth, appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change airplane flight path, speed, or attitude as needed.

(ii) Limit values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with:

(A) Airplane structural limits;

(B) Required safe and controllable maneuvering of the airplane; and

(C) *Margin to critical conditions.* Unsafe flight characteristics/conditions must not result if dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions, in any appropriate combination and phase of flight, can produce a limited flight parameter beyond the nominal design limit value.

(iii) The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics such as damping and overshoot must also be appropriate for the flight maneuver and limit parameter in question.

(iv) When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

(2) *Failure States*

EFCS (including sensor) failures must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The flightcrew must be alerted by suitable means if any change in envelope limiting or maneuverability is produced by single or multiple failures of the EFCS not shown to be extremely improbable.

(3) *Abnormal Attitudes*

In case of abnormal attitude or excursion of any other flight parameters outside the protected flight boundaries, the operation of the EFCS, including the automatic protection functions, must not hinder aircraft recovery.

(b) Angle-of-Attack Limiting

(1) FAR Part 1, § 1.2, Abbreviations and Symbols

(i) In lieu of the definition of V_S in § 1.2, the following applies in subparts B, E, F, and G of FAR 25: "V_S means the reference stalling speed."

Discussion: This caliabrated speed is determined in the stalling maneuver and expressed as $V_{CLMAX}/\sqrt{N_{ZW}}$, where V_{CLMAX} is the speed occurring where C_L is first a maximum, and N_{ZW} is the flight path normal load factor (not greater than 1.0) at the same point; C_L can be expressed as

$$\frac{N_{ZW}\,W - F_G \sin(AOA + iF_G}{{}_qS};$$

conditions associated with the determination of the stalling speed are those provided in § 25.103 of the FAR.

(ii) In lieu of the definition of V_{SO} given in § 1.2, the following applies: "V_{SO} means the reference stalling speed in the landing configuration."

(iii) In lieu of the definition of V_{SI} given in § 1.2, the following applies: "V_{SI} means the reference stalling speed in a specific configuration."

(iv) In addition to the definition given, the following also apply:

"V_{REF} means the steady landing approach speed, selected by the applicant for manual landing, for a defined landing configuation."

"V_{MIN} means the minimum speed obtained by conducting a stalling maneuver."

"V_{SW} means the speed at which onset of natural or artificial stall warning occurs."

(2) FAR Part 25—Airworthiness Standards: Transport Category Airplanes.

(i) In lieu of compliance with § 25.21(b), the following applies: "The flying qualities will be evaluated at speeds based upon the forward CG stalling speed."

(ii) In lieu of compliance with § 25.103(a), the following applies: "V_S is the reference stalling speed with—"

(iii) In lieu of compliance with § 25.103(a)(1), the following applies: "Stalling speed determined at not greater than IDLE thrust (NOTE: automatic go-round thrust application feature must be disengaged)."

(iv) In lieu of compliance with § 25.103(b)(1), the following applies: "From a stabilized straight flight condition at any speed not less than 1.16 V_S, (or speed at AOA protection onset, if greater) nor more than 1.30 V_S, apply elevator control to decelerate the airplane so that the speed reduction at the stall does not exceed on knot per second."

(v) In lieu of § 25.107(b)(1), the following applies: "1.13V_S for—"

(vi) In addition to compliance with § 25.107(c) (1) and (2), the following also applies:

"A speed selected by the applicant which provides fixed-speed maneuver capability, which is free of stall warning and Alpha floor, not less than the values shown in Table B.2."

Note.—Unless AOA protection system production tolerances are acceptably small, so as to produce insignificant changes in

performance determinations, the flight test settings for features such as Alpha floor and stall warning should be set at the low AOA tolerance limit; high AOA tolerance limits should be used for characteristics evaluations.

TABLE B.2

Configuration	Speed	Maneuvering bank angle	Maximum thrust representative of
Takeoff	V_2	30° (stall warning) 25° (Alpha floor)	WAT-limited V_2 climb.
Takeoff	*V_2+XX	40°	Climb, rating (all eng).
En route	+V_{FTO}	40°	WAT-limited final climb.
Landing	V_{REF}	40°	−3° Flight Path.

Note.—FWD CG Symmetrical Thrust is Acceptable.
*Airspeed approved for all-engines initial climb.
+Airspeed at end of final takeoff (FTO) flight path for engine-out performance.

(vii) In lieu of compliance with § 25.119(b), the following applies: "A climb speed of not more than V_{REF}."

(viii) In lieu of compliance with § 25.121(c) the following applies: "Final takeoff. In the en route configuration at the end of the takeoff path determined in accordance with § 25.111, the steady gradient of climb may not be less than 1.2 percent at a speed not less than:

- 1.23 V_S, or
- A speed which provided fixed-speed maneuvering capability which is free of stall warning and Alpha floor, not less than the value shown in TABLE B.2, and with—"

(ix) In lieu of compliance with § 25.121(d)(3), the following applies: "A climb speed established in connection with normal landing procedures but not exceeding $1.4V_{s1}$."

(x) In lieu of compliance with § 25.125(a)(2), the following applies: "A stabilized approach, with a calibrated airspeed of not less than V_{REF}, must be maintained down to the 50-foot height. V_{REF} may not be less than: (a) $1.23\ V_{S0}$, or (b) the speed selected by the applicant which provides a fixed-speed maneuvering capability, which is free of stall warning and Alpha floor, not less than the value shown in TABLE B.2."

(xi) In addition to compliance with the requirements of § 25.143, the following also apply:

"(1) The airplane must be shown to have suitable flight-path stability and control characteristics both in normal flight and when windshear is encountered in a takeoff or landing configuration. This may be shown by an appropriate combination of simulation and flight test."

Note.—Suitable characteristics are those no worse than conventionally controlled aircraft in similar conditions.

"(2) Operation of automatic features (such as significant EFCS stability or control changes) must not adversely affect normal flight operations, including during expected levels of atmospheric disturbance."

(xii) In lieu of the speeds given in the following Part 25 regulations, comply with speeds as follows:

Section 25.145(a), V_{MIN} in lieu of V_S.

Sections 25.145(b)(1)–(4), $1.3V_{S1}$ in lieu of $1.4V_{S1}$.

Section 25.145(b)(6), $1.3V_{S1}$ in lieu of $1.4V_{S1}$.

Section 25.145(b)(6), V_{MIN} in lieu of $1.1V_{S1}$.

Section 25.145(b)(6), $1.6V_{S1}$ in lieu of $1.7V_{S1}$.

Section 25.145(c), $1.13V_{S1}$ in lieu of $1.2V_{S1}$.

Section 25.147(a), (a)(2), (c), (d), $1.3V_{S1}$ in lieu of $1.4V_{S1}$.

Section 25.149(c), $1.13V_S$ in lieu of $1.2V_S$.

Section 25.161(b), (c)(1), (c)(2), (c)(3), (d), $1.3V_{S1}$ in lieu of $1.4V_{S1}$.

Section 25.175(a)(2), (b)(1), (b)(2), (b)(3), (c)(4), $1.3V_{S1}$ in lieu of $1.4V_{S1}$.

Section 25.175(b)(2)(ii), $(V_MO+1.3V_{S1})/2$ in lieu of $(V_MO+1.4V_{S1})/2$.

Section 25.175(c), V_{MIN} and $1.7\ V_{s1}$ in lieu of $1.1V_{S1}$ and $1.8V_{S1}$.

Section 25.175(d), V_{MIN} and $1.7V_{S0}$ in lieu of $1.1V_{S0}$ and $1.3V_{S0}$.

Section 25.175(d)(5), $1.3V_{S0}$ in lieu of $1.4V_{S0}$.

Note.—The stability requirements for §§ 25.173 and 25.175 are further amended by the special condition associated with longitudinal stability.

Section 25.177(a), (b)(1), $1.13V_{S1}$ in lieu of $1.2V_{S1}$.

Section 25.201(a)(2), $1.5V_{S1}$ in lieu of $1.6V_{S1}$.

(xiii) In lieu of compliance with § 25.203(c), the following applies: "With the EFCS operating normally and autothrust ON, the airplane must be shown to have suitable handling characteristics when decelerating at various rates and up to 1.5g in turning flight to the AOA limit."

(xiv) In lieu of compliance with § 25.207(a), the following applies: "With the AOA limiter operating normally, stall warning is not required. For failure states with the AOA limiter inoperative, sufficient stall warning margin must be provided in the following straight and turning flight conditions:

(1) Stall-free characteristics must be shown in power-off, straight ahead stall approaches to a speed five percent (but not less than five knots) below V_{SW}.

(2) Stall-free characteristics must be shown in turning flight stall approaches, at entry rates up to three knots per second, when recovery is initiated not less than one second after the onset of stall warning."

(xv) The requirements of § 25.207(c) are not applicable.

(c) Normal Load Factor (g) Limiting

In addition to compliance with the requirements of § 25.143, the following apply:

(1) The positive limiting load factor must not be less than 2.5g (2.0g with high-lift devices extended) for the EFCS normal state.

(2) The negative limiting load factor must be equal to or more negative than minus 0.5g (0.0g with high lift devices extended) for the EFCS normal state.

Discussion: This allows an incremental plus or minus 1.5g for maneuvering flaps up, and plus or minus 1.0g flaps extended. This Special Condition does not impose an upper bound for the limiter, nor does it require that the limiter exist. If the limit is set at a value beyond the structural design limit maneuvering load factor "n" of §§ 25.333(b) and 25.337 (b) and (c), there should be a very positive tactile feel built into the controller and obvious to the pilot that serves as a deterrent to inadvertently exceeding the structural limit.

(d) High-Speed Limiting

In addition to compliance with the requirements of § 25.143 of the FAR, the following applies: "Operation of the high-speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to overspeed warning."

(e) Pitch and Roll Limiting

In addition to compliance with the requirements of § 25.143 of the FAR, the following applies: "Operation of the pitch and roll limiter must not:

(1) Impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engine takeoff, plus a suitable margin to allow for satisfactory speed control.

(2) Restrict or prevent attainment of roll angles up to 65° or pitch attitudes necessary for emergency maneuvering."

7. Side Stick Controllers

(a) Pilot Strength

In lieu of the "strength of pilots" limits of § 25.143(c) for pitch and roll, and in lieu of specific pitch force requirements of §§ 25.145(b) and 25.175(d), the following applies: "It must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal."

(b) Controller Coupling

In the absence of specific requirements for controller coupling, the following applies: "The electronic side stick controller coupling design must provide for corrective and/or overriding control inputs by either pilot with

no unsafe characteristics. Annunciation of controller status must not be confusing to the flightcrew."

(c) Pilot Control

In the absence of specific requirements for side stick controllers, the following applies: "It must be shown by flight tests that the use of sidestick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/tasks and turbulence."

(d) Autopilot Quick-Release Control Location

In lieu of compliance with § 25.1329(d) of the FAR, quick release (emergency) controls must be on both side stick controllers. The quick release means must be located so that it can readily and easily be used by the flightcrew.

8. Flight Recorder

(a) In addition to compliance with the requirements of § 25.1459(a) of the FAR, the flight recorder must record the following parameters in addition to those specified in § 121.343(a)(2):

(1) Pilot and copilot pitch controller position, pitch control surface position, pilot and copilot roll controller position, aileron and spoiler surface position, rudder pedal position and rudder surface position, and the auto thrust system commanded thrust parameter.

(2) The following for each engine installation: Actual thrust (N1/EPR), electronic control command thrust, thrust lever position.

(b) In lieu of compliance with § 25.1459(a)(4) of the FAR, there must be an aural or visual means for preflight checking that data are being recorded.

Issued in Seattle, Washington, on October 2, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-23948 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-47]

Proposed Amendment of Transition Area; Venice, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the transition area located at Venice, LA. This proposed action is necessary since a new LORAN C Area Navigation (LORAN RNAV) special instrument approach procedure (SIAP) to several heliports located in the vicinity of Venice, LA, has been developed using LORAN C technology. The intended effect of this proposed action is to provide additional controlled airspace for aircraft executing this new LORAN RNAV SIAP to these various heliports.

DATES: Comments must be received on or before November 23, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-47, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-47." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area located at Venice, LA. This action is necessary since a new LORAN RNAV SIAP to various heliports located in the Venice, LA, area has been developed using LORAN C technology. This will be a point in space approach and will not be associated with a particular heliport. Aircraft executing this approach will proceed by visual flight rules (VFR), weather conditions permitting, after the missed approach point (MAP) to either the Chevron Heliport or the PHI Heliport. Additional heliports may become associated with this approach in the future. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, 87-ASW-47 therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Venice, LA [Amended]

By adding: and within a 7-mile radius of a point in space located at Latitude 29°15'39.70" N., Longitude 89°21'10.40" W.

Issued in Fort Worth, TX, on October 5, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-24114 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-25]

Proposed Revision of Control Zone: Oklahoma City Wiley Post Airport, and Oklahoma City Will Rogers World Airport, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the control zones at Oklahoma City Wiley Post Airport, OK, and at Oklahoma City Will Rogers World Airport, OK. The intended effect of this proposed multiple action is to release that controlled airspace no longer required. This action is necessary since a review of the existing control zone airspace revealed that, due to the relocation of the Oklahoma City VORTAC and the cancellation and/or modification of standard instrument approach procedures (SIAP), there exists more controlled airspace than is necessary.

DATE: Comments must be received on or before November 18, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic division, Southwest Region, Docket No. 87-ASW-25, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, Environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) to revise the control zones at Oklahoma City Wiley Post Airport, OK, and at Oklahoma City Will Rogers World Airport, OK. This multiple action is necessary since a review of the existing control zone airspace revealed that, due to the relocation of the Oklahoma City VORTAC, there is more controlled airspace than is required. Since the Oklahoma City VORTAC has been relocated and the SIAP's that utilized the VORTAC in its old location have been either canceled or modified, existing control zone extensions to the southwest of the Wiley Post Airport and to the northwest of the Will Rogers World Airport are no longer required. The intended effect of this proposed action is to release that controlled airspace no longer required due to the cancellation and/or modification of these SIAP's. The proposed action will alter the control zone at the Wiley Post Airport to a 5-mile radius of the airport with one short extension to the north, and will alter the control zone at the Will Rogers World Airport to a 5-mile radius of the airport with one short extension to the south. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510;

E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69).

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Oklahoma City Wiley Post Airport, OK [Revised]

Within a 5-mile radius of the Wiley Post Airport (Latitude 35°32'03" N., Longitude 97°38'48" W.); within 2 miles each side of the Wiley Post ILS Localizer north course extending from the 5-mile radius zone to the OM (Latitude 35°37'33" N., Longitude 97°38'50" W.).

Oklahoma City Will Rogers Airport, OK [Revised]

Within a 5-mile radius of the Will Rogers World Airport (Latitude 35°23'35" N., Longitude 97°36'02" W.); within 3 miles each side of the Oklahoma City Runway 35R ILS Localizer south course extending from the 5-mile radius zone to the LOM (Latitude 35°17'42" N., Longitude 97°35" W.).

Issued in Forth Worth, TX, on October 2, 1987.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 87-24115 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 26

[CGD 87-058]

Bridge-to-Bridge Radiotelephone Regulations

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is soliciting comments from interested persons regarding the need to amend the Vessel Bridge-to-Bridge Radiotelephone Act, and implementing regulations in 33 CFR 26.03. A perceived need exists to amend the Act, and regulations, by expanding the categories of vessels required to carry a radiotelephone to include every power-driven vessel of 20 meters or more in length. The Coast Guard expects that increased availability of bridge-to-bridge communications will reduce the risks associated with navigating in congested areas.

DATES: Comments must be received on or before December 18, 1987.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21) (CGD 87-058), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection or copying at the above address, Room 1606, between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Palmer, Project Manager, Office of Navigation (G-NSS-2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, Telephone (202) 267-0362.

SUPPLEMENTARY INFORMATION: The Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C. 1201 *et seq.*, requires certain described vessels upon the navigable waters of the United States, within the boundary lines described in 46 CFR Part 7, to carry a radiotelephone. The requirements of the Act are implemented in 33 CFR Part 26. One class of vessels required by the Act, and § 26.03(a)(1) of the regulations, to carry a radiotelephone is every power-driven vessel of 300 gross tons and upward. The Lower Mississippi River Advisory Committee (LMRAC) has studied measures to improve communications and prevent accidents by focusing on the requirements of the "Vessel Bridge-to-Bridge Radiotelephone Act" and VTS procedures in the Lower Mississippi River. Based upon that study a perceived need exists to amend the Act, and regulations, to require every power-driven vessel of 20 meters or more in length, while navigating within the boundary lines described in 46 CFR Part 7, to carry a radiotelephone. The increased availability and proper use of radiotelephones is expected to benefit safe navigation by increasing vessel bridge-to-bridge communications. The Rules of the Road Advisory Council (RORAC) has formed a Working Group to consider the possible safety benefit of amending the Act and regulations. The Coast Guard and RORAC Working Group desire to consider the interest and economic effect on the marine industry if every power-driven vessel of 20 meters or more in length were required, while navigating within the boundary lines, to carry a radiotelephone to provide for more participation in communicating navigational safety information. The public is invited to submit comments concerning the need to amend the Act and regulations as explained, and what measures may be taken to enhance bridge-to-bridge communication of navigational information.

Dated: October 9, 1987.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 87-24168 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[FRL-3278-7; Docket Nos. AM054VA and AM059VA]

Proposed Approval of Revisions to Virginia's State Implementation Plan and Section 111(d) Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The Commonwealth of Virginia submitted to EPA a revised format for its air pollution control regulations, as well as many changes, amendments, and deletions to specific provisions contained within the regulations. Virginia requested that EPA approve these changes as revisions of the Virginia State Implementation Plan.

EPA is proposing approval, as revisions of the Virginia State Implementation Plan (SIP) and section 111(d) Plan, of amendments to Virginia's air pollution control regulations. These amendments include a revised format for Virginia's Regulations, as well as additions and modifications to, or deletions of, specific provisions within the Regulations. While most of the changes are administrative in nature, there are several amendments that affect the allowable air pollutant emissions standards for various sources covered by the Virginia SIP. Included under this category are the stack height regulatory revisions submitted by Virginia in accordance with the **Federal Register** notice of July 8, 1985. EPA is proposing approval of the proposed Virginia SIP and section 111(d) Plan revisions, as they meet the requirements of the Clean Air Act and 40 CFR Parts 51 and 60.

DATE: Comments must be submitted on or before November 18, 1987.

ADDRESSES: Copies of the proposed Virginia SIP revisions and the accompanying support documents are available for public inspection during normal business hours at the following locations.

U.S. Environmental Protection Agency, Region III, Air Program Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg, (3AM11)

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, VA 23219, Attn: William W. Parks

All comments on the proposed revision submitted within 30 days of this notice will be considered and should be

addressed to Mr. David L. Arnold, Chief, Delmarva/DC Section at the above EPA Region III address. Please reference the EPA Docket Number found in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Harold A. Frankford, 3AM13, (215) 597–1325 or Kevin Magerr, (215) 597–6863 at the Region III address above.

SUPPLEMENTARY INFORMATION:

40 CFR Part 52

Background

On February 15, 1985, the Commonwealth of Virginia submitted to EPA Region III both a revised format and numerous amendments, both administrative and substantive, to its Regulations for the Control and Abatement of Air Pollution. Virginia requested that the changes be reviewed and processed as revisions of the Virginia State Implementation Plan (SIP). Because of the volume and the complexity of a number of these changes, EPA sought additional information from Virginia in order to better determine the possible impacts of these regulatory changes on current and future air quality. Virginia has provided the requested information, and thus EPA has determined that the Commonwealth's submittal is complete for proposed rulemaking action as of September 5, 1985.

The Virginia regulations have undergone many changes, both substantive and nonsubstantive. Many of the nonsubstantive changes were made to the regulations to improve their clarity and simplicity. The new format of the regulations organizes the emission standards into separate rules based on source type. There are still some rules based on pollutant type. These rules pertain to visible emissions, fugitive dust/emissions, odor, and non-criteria pollutants. Since the latter two categories are not part of the Virginia SIP, EPA has not reviewed the changes made to these rules. The emission standards in these rules are cross-referenced in the source-specific rules.

One element of the reorganization effort was to relocate those definitions previously located in Part I that were primarily used or associated with a particular element (part, rule, or section) within the regulations. Many new definitions have been added to the new source-specific rules developed under the State's Regulatory Reform Program. Parts I (Definitions) and II (General Provisions) contain the definitions and general provisions, respectively, as in the old format, with exception of section 2.33, which has been relocated to Part VIII (Permits for New and Modified Sources). Part IV (Existing and Certain Other Sources) contains the source-specific rules and includes the applicable definitions. Each source-specific rule has been organized into subsections as listed below:

1. Applicability and Designation of Affected Facility
2. Definitions
2a. Control Technology Guidelines (as applicable)
3. Standard for Particulate Matter
3a. Other applicable standards
4. Standard for Visible Emissions
5. Standard for Fugitive Dust/Emissions
6. Standard for Odor (not part of Virginia's SIP)
7. Standard for Non-criteria Pollutants (not part of Virginia's SIP)
8. Compliance
9. Test Methods and Procedures
10. Monitoring
11. Notification, Records and Reporting
12. Registration
13. Facility and Control Equipment Maintenance or Malfunction
14. Permits

Parts V (New Source Performance Standards), VII (Air Pollution Episodes), VIII (Permits for New and Modified Sources), and Appendices A through E remain organized as they are in the current SIP.

The source-specific rules in Part IV all contain a new provision in the definition section. This provision, "As used in this rule, all terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context," is a requirement imposed by the Commonwealth of Virginia. The phrase, "unless otherwise required by context," implies that definitions other than the approved definitions may be used as needed. This phrase (which precedes all sections containing definitions) is lifted from other Virginia regulations and is intended to deal with situations where a term may be uniquely defined for a particular provision of the regulations and the unique definition is inappropriate in other contexts. After the wording was included in the agency's regulations, the Virginia Code Commission exercised its long held authority to prescribe the style and format of all State regulations. These procedures now require such wording in all State regulations. State agencies are mandated by law to follow the Code Commission procedures.

The State certified that public hearings pertaining to these proposed revisions were held on June 15, 1984, and September 18, 1984, in Richmond, as required by 40 CFR 51.102. Additional public hearings were held in Abingdon, Roanoke, Lynchburg, Virginia Beach, and Springfield.

A description of the substantive proposed revisions of the Virginia SIP is listed below:

Amendments to Part I-Definitions

The chart which follows categorizes the changes made to the definitions in Virginia's Regulations. Many definitions currently located in Part I of the Virginia SIP regulations have been relocated to Virginia's new source-specific regulations. While a number of these definitions have been modified, EPA has determined that these changes clarify the wording and intent of the definitions, and do not substantively change their respective meaning. In addition, several SIP-approved definitions have been deleted, as Virginia has deleted the regulations in which these terms appear. In some cases, the deleted definitions have been replaced with new definitions that are consistent with EPA's New Source Performance Standards (NSPS) definitions in 40 CFR Part 60. Virginia has also added definitions, not currently in SIP regulations, to some of its source-specific regulations. Furthermore, Virginia modified some definitions and deleted others to conform with the amended Federal Stack Height regulations. One modified term—variance—will be reviewed in a separate rulemaking action.

EPA has reviewed the changes to Virginia's defined terms and considers them to be acceptable. Therefore, EPA proposes approval of the additions, modifications, and deletions of Virginia's definitions.

Part I—Virginia Definition Changes

Added

Fuel Burning Equipment Installation
Refuse Derived Fuel (RDF) Combustion Installation
Asphalt Concrete Plant
Coal processing & Conveying Equipment
Coal Storage System
Pneumatic Coal-Cleaning Equipment
Transfer & Loading System
Portland Cement Plant
Woodworking Operation
Aluminum Production Operation
Brass or Bronze
Brass or Bronze Production
Ferroalloy Production Operation
Gray Iron Foundry Operation
Lead
Magnesium Production Operation
Primary Copper Smelter
Primary Metal Operation
Secondary Lead Production Operation
Secondary Metal Operation

Steel Foundry Operation
Zinc Process Operation
Feed Manufacturing
Reactivation

Modified

Affected Facility
Alternative Method
Consent Agreement
Control Program
Dispersion Technique
Elevated Terrain
Emission Limitation
Emission Standard
Equivalent Method
Excessive Concentrations
GEP Stack Height
Hazardous Air Pollutant
Malfunction
Nearby
Nonmethane
(Standard) Metropolitan Statistical Area
Standard of Performance
Stationary Source
Fugitive Dust
Fugitive Emissions
Six-Minute Period
Fuel Burning Equipment
Total Capacity
Combustion Unit
Manufacturing Operation
Materials Handling Equipment
Physically Connected
Process Operation
Process Unit
Process Weight
Process Weight Rate
Total Capacity
Incinerator
Gasoline
Materials Handling Equipment
Nitric Acid Production Unit
Stack
Stack in Existence

Deleted

Hydrocarbon
Fumes
Mist
Air Table
Photochemically Reactive
Organic Compounds
Loading Facility
Effluent Water Separator
Architectural Caotings
Coal Refuse
Coal Refuse Disposal Area
Coal Refuse Pile

Modified Definitions—VOC Categories

Gasoline Dispensing Facility
Allowable Emission
Begin Actual Construction
Commence
Federally Enforceable
Major Modification
Major Stationary Source
Modification
Modified Source
New Source
Potential to Emit
Public Comment Period
Reconstruction
Secondary Emissions
State Enforceable
Stationary Source
Uncontrolled Emission Rate
Building, Structure or Activity

Organizational Changes Only—No Word Changes

Actual Emissions
Commence
Lowest Achievable Emission Rate
Major Stationary Source
Reconstruction

Description of Substantive Changes

Part II—General Provisions

Section 120–02–02—Establishment of Regulations and Orders. A provision is added to incorporate public participation procedures (Appendix E) for soliciting and utilizing the input of interested parties for use in the formation and development of agency actions relating to the adoption, amendment or repeal of regulations.

Section 120–02–31—Registration. A provision is added notifying owners that de minimis exemption levels are available in the individual rules containing the emission standards for each source type. The effect of this provision on specific sources will be addressed later in this notice.

Part III—Ambient Air Quality Standards

Section 120–03–06—Hydrocarbons. Virginia has repealed the ambient air quality standard for hydrocarbons. The federal standard had previously been repealed by EPA. See 48 FR 629 (1983).

Part IV—Existing and Certain Other Sources

Special Provisions—Section 120–04–01—Applicability. An amendment to subsection (b) provides that all stationary sources, the reconstruction of which commenced on or after December 10, 1976, will be subject to the provisions of Part V (New Source Performance Standards). This amended provision serves to clarify any questions as to which SIP provisions would be applicable to reconstructed sources.

Section 120–04–02—Compliance. 1. For section 120–04–02 (Compliance), the provision in paragraph (A)(3) that exempts sources from the visible emission standard during periods of sootblowing is deleted. EPA had not considered this prior exemption to be part of the Virginia SIP.

2. In paragraph 120–04–02 (H)(6), pertaining to the application of the Appendix N timetable for compliance schedules, Virginia had substituted the word "infeasible" with "impractical."

The State has since begun the process to amend this provision by reinserting the word "infeasible". Because this subsequent change restores the current SIP-approved language, EPA will take no action at this time with respect to this particular change.

3. For section 120–04–02 I (Stack Heights) is modified to conform with 40 CFR § 51.100, 51.118, and 51.165(b). EPA has reviewed these amendments, and has determined that they are consistent with EPA's requirements for good engineering practice (GEP) stack height and dispersion techniques as revised on July 8, 1985.

Section 120–04–04—Monitoring. For section 120–04–04 (Monitoring), those continuous emission monitoring (CEM) provisions which affect only one source type are relocated to the rule containing the emission standards for that source type.

In addition, former subsection (g)(5), which provided an exemption for facilities which were to be retired within 5 years of the effective date of this provision (December 10, 1976) is deleted, as the 5-year period has expired. Therefore, Virginia has determined that this section is obsolete.

Rule 4–1 Visible Emissions. a. The definition of fugitive emissions is modified to delete emissions from vents as fugitive emissions. Hereafter, Virginia will treat emissions from vents as stack emissions for the purpose of determining compliance with the opacity regulations.

b. The definition of six minute period is amended to allow its use, as the case may be, with both "one hour" or "one hour period." The source must consistently use either "one hour" or "one hour period" in determining compliance.

c. The provision that prohibits pollutants that cause a traffic hazard (Former section 4.27) is deleted.

The current SIP-approved opacity limit is 20%, except that visible emissions may exceed 20%, but not 60%, for up to six-minutes in any hour. Under this proposed SIP revision, any visible emission which exceeds 20% opacity for longer than six minutes in any one-hour period is also considered to be a violation.

Rule 4–8 Particulate Emissions from Fuel Burning Equipment 120–04–0801—Applicability and Designation of Affected Facility. The applicability exemption for gaseous fuel-fired fuel burning equipment (FBE) has been increased from one million (1,000,000) btu/hr to 10 million (10,000,000) btu/hr. Based on an evaluation of the

combustion characteristics of natural gas, EPA has determined that emissions from gaseous FBE are much lower than the applicable standard. The change has no impact on air quality. Therefore, EPA proposes to approve this change as a SIP revision.

Section 120-04-0802—Definitions. Virginia has amended the term "total capacity." This definition refers to the sum of the rated capacities which must be operated simultaneously under conditions of "100% use load." The current definition refers to conditions of "100% load." Virginia explains in its SIP revision submittal that "use load" refers to the load that is necessary for the FBE installation to meet in order to support normal plant operation. This prevents the plant owner from claiming that standby or emergency units be included in the total capacity definition. If this were done, it would increase the allowable emissions singificantly by allowing the owners to allocate emissions allowed for the unit that is not operating to those that are. This change was made to clarify and make legally enforceable an interpretation Virginia has used for some time. EPA is proposing SIP approval, and accepts Virginia's determination that the revised definition is not expected to allow increased sulfur dioxide (SO_2) or total suspended particulate (TSP) emissions.

Section 120-04-0803—Standard for Particulate Matter. In rule 4-8, Virginia has modified the definition of the facilities to which this rule is applicable. The term "fuel burning equipment" has been modified to read "fuel burning equipment unit." Virginia provided an explanation that the term "unit" applies to an individual boiler, while the term "installation" refers to a group of fuel burning equipment units. All standards in this section pertain to fuel burning equipment installations and are based on heat input at total capacity in BTU x 10^6/hour. The regulations controlling fuel burning equipment installations and fuel burning equipment units would be identical since the standard is expressed in the amount of pollutant generated per million BTU/hour. The term fuel burning equipment unit is used only to determine which boilers are exempt from this rule. Virginia has stated, and EPA agrees, that for all practical purposes, the definition of "fuel burning equipment" should be regarded as the definition of "fuel burning equipment unit." EPA is proposing SIP approval, and accepts Virginia's determination that the revised definition is expected to have no adverse impact on air quality.

Rule 120-04-0804—Emissions Allocation System. Virginia has revised its procedures for determining what sources may or may not use its emission allocation system. In effect, the proposed SIP revision serves to limit the application of the system to multiple fuel burning equipment units which do not burn liquid and/or gaseous fuels exclusively. This proposed SIP revision would serve to limit the number of sources that may elect to use this emissions allocation system.

Rule 120-04-0805—Determination of Collection Equipment Efficiency Factor. The current Virginia SIP contains provisions for determining the efficiency factor of pollution collection equipment. In addition, the pre-1985 regulations contained a provision describing alternative criteria by which the efficiency factor for collection equipment would be determined, should the owner of such equipment not accept the standard provisions. EPA had previously disapproved this "alternative criteria" provision, because such provisions were considered to be unenforceable. Virginia has now deleted these alternative provisions. Therefore, deletion of these alternative provisions is acceptable to EPA.

Rule 120-04-0806—Standard for Sulfur Dioxide Emissions. Virginia has revised the wording of the formula for determining allowable SO_2 emissions from fuel burning equipment. These changes will be discussed in a separate rulemaking action.

Section 120-04-0807—Standard for Visible Emissions. Virginia has added to Rule 4-8 a provision which regulates visible emissions from fuel burning equipment. The provision of section 120-04-0807(b) are virtually identical to the visible emissions provision set forth in section 120-04-02 of Rule 4-1. Other sections have been revised in order to be consistent with the new format.

Rule 4-7—Emission Standards for Incinerators. The definition of "incinerator" has been broadened to include "other devices" besides furnaces that are used in the process of burning waste for the primary purpose of destroying matter and/or reducing the volume of the waste by removing combustible matter.

Deletion of Former Rule 4-8—Coal Refuse Disposal Areas. Virginia has deleted the requirement to regulate air pollutant emissions from coal refuse disposal areas. The State believes, and EPA agrees, that the impact upon air quality will be negligible. The rule was originally adopted in 1972 and was intended to prevent air pollution caused by burning of coal refuse at these disposal areas. It requires that an owner take certain measures to prevent his coal refuse pile from igniting. Essentially the rule does not directly control air pollution but establishes operating procedures designed to prevent it.

Since the initial adoption of this rule, the Federal Mine Safety and Health Administration Office has established regulations that accomplish the same goal and has delegated the responsibilities for enforcement of these regulations to the Virginia Division of Mines and Quarries (VDMQ). The State believes that the VDMQ has a more effective rule and their available technical expertise and resources exceed the Air Board's.

EPA proposes to allow Virginia's action to delete this rule, on the State's evaluation of the rule which revealed that the regulation does not significantly impact air quality, is duplicative and, therefore, is no longer needed.

Rule 4-9 Emission Standards for Coke Ovens. The wording of the regulations has been revised to be consistent with the new format. There are no substantive changes that would affect the current SIP emissions limit.

Rule 4-41 Mobile Sources. a. Section 120-04-4103B (Visible Emissions) is amended to allow:

i. Tour buses to idle for 10 minutes per hour in hot weather to maintain air conditioning.

ii. Diesel vehicles to idle for up to 10 minutes per hour to minimize restart problems.

b. The provision that requires the owners of ships and other watercraft to notify the Agency of malfunctions and breakdowns is deleted. This change is acceptable as Virginia no longer provides capacity exceptions for malfunctioning, watercraft.

The exceptions in this section have been expanded from the current SIP limitation of three minute-periods to prevent re-start problems by old, poorly-maintained diesel trucks and tour buses. EPA has determined that these types of vehicles contribute negligibly to mobile source VOC emissions. The three minute period limitation remains in effect for gasoline-powered vehicles and taxis, which are likely to contribute more significantly to mobile source VOC emissions. Because of the limited applicability of this exemption provision, affecting about 24,000 vehicles Statewide, EPA has determined that such exemption provisions will have no detectable impact on current air quality, including a negligible impact on air quality in areas currently not attaining ozone and carbon monoxide standards. EPA agrees with this conclusion, and proposes SIP approval.

Identification of Sections not in the SIP. Rules 4–40, 4–2 and 4–3 contain provisions regarding emissions standards for open burning, non-criteria pollutants, and odor, respectively. None of these provisions are currently in the SIP. For the purposes of this proposed rulemaking action, EPA does not intend to either review or act upon the provisions in Rules 4–40, 4–2 or 4–3 as revisions to the Virginia SIP. In addition, EPA does not intend to either review or act upon, as revisions to the SIP, any of the provisions pertaining to noncriteria pollutants and odor that are contained in Rules 4–41, and 4–4 through 4–39 inclusive.

Process Weight Regulation Changes. Process weight regulations are designed to control air pollution from manufacturing or process operations other than fuel burning equipment. A number of Virginia process weight regulations have been amended. Generally, they include extensions of a process weight standard, lower process weight rates, or the deletion of the standard from the lowest rates altogether. EPA considers overall emissions impact from these sources to be neglible. Therefore, EPA also considers the effect of these changes to be de minimus to air quality, and thus proposes SIP approval.

The following is a list of changes to the regulation and the designated sections to which the rule applies

COMPARISON OF PROCESS WEIGHT REGULATION AMENDMENTS

Rule—No.	Process	Comparison to SIP-Approved Rule
4–4		Emission Standards for General Process Operations.
120–04–0403	General Table—Areas 1–6	Administrative changes; reference to Appendix Q.
120–04–0404	General Table—Area 7	The general process weight standard for sources with a process weight rate of 50 lb./hr. has been deleted.
120–04–0401	General Process Operations	For gaseous fuel-fired fuel burning equipment—Exemption level for applicability to provisions is increased from one million (1,000,000) BTU/hr. to ten million (10,000,000) BTU/hr. Except as otherwise provided, process operations with a process weight rate capacity of <100 lb./hr. are exempt from provisions of this rule.
4–8	Asphalt Concrete Plants	Maximum allowable TSP emissions rates are extended to cover sources with a process weight rate <5 tons/hr. (Areas 1–6). For Area 7, the process weight rate table found in section 120–04–0404 of Rule 4–4 applies.
4–12	Chemical Fertilizer Manufacturing Operations	Maximum allowable TSP emission rate is extended to cover sources with process weight rates <15 tons/hr.
4–14	Sand & Gravel Processing Operations, Stone Quarrying & Processing Operations.	Maximum allowable TSP emission rate is extended to cover process weight rates <100 lb./hr. or <0.05 tons/hr. (Areas 1–6). Maximum allowable TSP emission rates for sources located in Area 7 are governed by process weight rate table found in section 120–04–0404 of Rule 4–4.
4–15	Coal Preparation Plants	Definition of "Air Table" is deleted; new definitions are added. "Air Table" is replaced with "Pneumatic Coal Cleaning Equipment."
4–16	Portland Cement Plants	Maximum allowable TSP emission rate is extended to cover sources with process weights <100 lb./hr. or <0.05 ton/hr. SO_2 Standard—S=2.64K.
4–17	Woodworking Operations	Process Weight Standard is deleted; maximum allowable TSP emissions shall not exceed 0.05 gr./dscf. (Areas 1–6) Process Weight table in section 120–04–0404 of rule 4–4, remains applicable for sources located in Area 7.
4–18	Primary and Secondary Metal Operations	New Terms defining those primary and secondary metal operations governed by this rule. Maximum allowable TSP emissions for sources located in Area 7 governed by section 120–04–0404 of Rule 4–4. (1–C) same.
4–19	Lightweight Aggregate Process Operations	Maximum allowable TSP emission rate extended to cover sources with process weights <0.05 ton/hr.
4–20	Feed Manufacturing Operations	Maximum allowable TSP emission rate is extended to cover sources with process weight rates <100 lb./hr. and <0.05 ton/hr. for sources located in Area 1–6. Maximum allowable TSP emission rates for sources located in Area 7 are governed by the process weight rate table found in section 120–04–04 of Rule 4–4.
4–22	Sulfur Recovery Operations	Maximum allowable SO_2 emissions rates are extended to cover sources with process weight rates >50 lbs./day and <500 lbs./day.

Revised Volatile Organic Compound (VOC) Regulations. [Rules 4–5, 4–6, 4–11, 4–24 through 4–39]. There are three substantive changes in the regulations covering volatile organic compounds. The first substantive change makes the regulations more stringent by lowering the exemption level for applicable sources from 7.3 tons/year to 7.0 tons/year. The sources affected are solvent metal cleaning operations, large appliance coating lines, magnet wire coating lines, automobile and light duty truck coating lines, can coating lines, metal coil coating lines, paper and fabric coating lines, vinyl coating lines, metal furniture coating lines, miscellaneous metal parts and products, coating application systems, and flatwood paneling coating application systems.

The second substantive change removes the exemption for sources with emissions less than 7.3 tons/year, 40 lb./day, and 8 lb./hour. The sources affected are bulk gasoline plants, as well as both fixed-roof and floating-roof petroleum storage tanks. Deletion of this exemption will make this rule more stringent by requiring all sources in the above categories to be subject to the rule.

The third substantive change removes the exemption for sources used exclusively for chemical or physical analysis or the determination of product quality and commercial acceptance. The sources affected are solvent metal cleaning operations in Appendix P areas other than Area 7 (Rule 4–24), volatile organic compound storage and transfer operations, and petroleum liquid storage and transfer operations (Rules 4–25, 4–27). The removal of this exemption makes the regulation more stringent by requiring that all sources in the above categories be subject to the rule.

Amendments to Part V—Standards of Performance for Stationary Sources—Special Provisions. Section 120–05–01 is amended to indicate the applicability dates for new sources (March 17, 1972) and reconstructed sources (December 10, 1976).

Section 120–05–01 (f) and (g) have been added to define the disposal and incineration requirements for new sources of volatile organic compounds (VOC).

The requirements for performance testing in section 5.02 are relocated to Part VIII, section 8.03(h).

Section 120–05–04 [Monitoring], those provisions which affect only one source type are relocated to the rule containing the standards of performance for that source type.

Standards of Performance Rules—1. Rule 5–1 Visible Emissions And Fugitive Dust/Emissions. a. The definition of fugitive emissions is modified to delete emissions from vents as fugitive emissions.

b. The definition of six minute period is amended to allow its use, as the case may be, with "one hour" or "one hour

period." The source must consistently use either "one hour" or "one hour period" in determining compliance.

2. Section 120–05–02 I (Stack Heights) is modified to conform with amended 40 CFR 51.100, 51.164 and 51.165(b). These rules apply to all sources that were or are constructed, reconstructed, or modified subsequent to December 31, 1970. EPA has reviewed the stack height revisions to these regulations and has determined that they are consistent with EPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985.

2. *Rule 5–4 Stationary Sources.* Virginia has amended the provision requiring the use of best available control technology (BACT). As amended, the Board will require BACT, rather than the new source performance standards (NSPS), for all new or modified sources. Previously, Virginia prescribed BACT only for those categories of new sources for which no NSPS had existed. EPA proposes approval of this amendment as BACT must be at least as stringent, as NSPS.

Provisions Not Subject to SIP Review.

3. EPA did not review the amendments to Rules NS–2 and NS–3, as these rules are not considered to be part of the SIP.

Part VII—Air Pollution Episodes

Virginia has made no substantive changes to this part. The amendments in Part VII are primarily made to conform with the revised format of the State regulations.

Part VIII—Permits for New and Modified Sources

Section 2.33 of the current SIP, referring to the general requirements for obtaining a permit for new and modified sources, has been relocated in Part VIII, section 120–08–01. The regulations pertaining to permit requirements for new sources located in nonattainment areas have been relocated to section 120–08–03.

The current SIP difinition of "major stationary source," as used in this section, is the "dual definition." The provisions referring to PSD permits for stationary sources and major modifications have been relocated to section 120–08–02. This section is not part of the SIP, as Virginia has received delegation of the federal PSD program in a prior EPA action, 46 FR 29753, and therefore, must follow the federal PSD requirements outlined in 40 CFR 52.21.

Other major amendments to Part VIII consist of the following:

A. Section 120–08–01 (Old section 2.33) is amended as follows:

1. A provision is added to identify the regulated entity (including any exemptions and exclusions), the situations under which a permit is needed and the area of applicability.

2. The provision covering emission testing is amended to specify the criteria for the use of alternative test methods and for granting waivers to the testing requirements.

3. The permit exemption levels are placed in a new appendix [Appendix R] and identified for all source types presently covered by emission standards.

4. The permit exemption level for fuel burning equipment is raised from 1 million Btu per hour to 10 million Btu per hour for units using liquid fuel or a combination of liquid/gaseous fuels and from 1 million Btu per hour to 50 million Btu per hour for units using gaseous fuels.

5. A provision based on mass emission rate (weight of pollutant per unit of time) is included in Appendix R to exempt small modifications.

6. A provision is added to identify the regulated entity (including any exemptions and exclusions), the situations under which a permit is needed and the area of applicability.

The waiver provisions mentioned above are limited to testing provisions and therefore EPA has determined that a State's action granting a waiver in a specific instance does not require a SIP revision.

Although Virginia's revised regulations raise the threshold under which sources may be exempted from permitting requirements, Virginia must still track all new sources, whether or not permits are required, for two reasons:

1. Regardless of the revised thresholds for permit exemptions, all installations that may be subject to Prevention of Significant Deterioration (PSD) review must still abide by Virginia's PSD requirements or set forth in section 120–08–02. Virginia Regulation 120–08–01 M contains a provision that precludes circumvention of the new source review requirements, regardless of the allowed exemptions. A provision in Appendix R states that in cases where a source is modified in increments so that no single increment would be subject to a regulatory provision, and such increments are not part of a preestablished program of modification, Virginia will consider the aggregate of these increments to determine such source's applicability.

2. EPA requires all States to review new sources to determine whether the increased emissions from such sources might cause either NAAQS violations or PSD increment violations, whichever is more restrictive. Currently, Virginia has a program to track emissions growth from all sources that are located in nonattainment areas. The provisions of 40 CFR 51.166(A)(4) requires that States shall review the adequacy of a plan on a periodic basis and 60 days within such time that an applicable increment is being violated. If such is the case, and either EPA or the State determines that such increment is being violated, then a finding will be made that the SIP is substantially inadequate, and these exemption provisions will have to be revised. Given these safeguards, EPA proposes to approve the exemptions, and encourages Virginia to implement a tracking system to ensure that sources exempt under the requirements of Appendix R will not violate PSD increments.

B. Section 120–08–03 is amended as follows:

1. A provision is added to identify the regulated entity (including any exemptions and exclusions), the situations under which a permit is needed, and the area of applicability.

2. The provision covering emission testing is amended to specify the criteria for the use of alternative test methods and for granting waivers to the testing requirements.

3. No provision in Part VIII was specifically amended as part of Virginia's stack height SIP revision. However, the following provisions in Part VIII contain cross references to the provisions in Part V:

a. Section 120–08–03 B. Definitions
b. Section 120–08–03 F. Standards/conditions for granting permits
c. Section 120–08–03 H. Compliance determination and verification by performance testing

Because the above provisions cross-reference the amended Part V provisions pertaining to GEP stack height, and EPA has determined that the GEP stack height provisions are correct. EPA has determined tht Virginia's new source review provisions cover the necessary requirements incorporating a GEP stack height analysis for new and modified sources.

4. Virginia's amended New Source Review regulation (section 120–04–08–01(a)) specifically exempts reactivated sources from new source review Virginia's regulation defined "reactivation" an "beginning operations of an emissions unit that has shut down."

Under current EPA policy, a reactivated source which has been shut down for two years or more, or has been removed from the State's emission inventory, would be subject to new

source review. Because Virginia's amended regulation represent a significant relaxation from the current SIP and does not conform to current EPA policy, EPA informed Virginia that the amended provisions which allow exemptions for reactivated sources as currently defined cannot be approved as a revision of the Virginia SIP. Accordingly, on August 7, 1986 the State agreed to withdraw these provisions from consideration a proposed SIP revision. Therefore, EPA will continue to enforce the provisions of the current Virginia SIP with regard to the applicability of reactivated sources to New Source Review.

On August 7, 1980, 45 FR 52735, EPA had promulgated regulations in 40 CFR Parts 51 and 52 with respect to prevention of significant deterioration and new source review (PSD/NSR) which required inclusion of vessel emissions in two provisions:

1. For applicability purposes, all dockside vessel emissions that could be attributable to a stationary source (i.e., marine terminal) had to be included in the primary emissions calculation for that source.

2. For offsetting and air quality analysis purposes, the vessel emissions which occurred as the vessel was going to and from the stationary source had to be included in secondary emissions calculations.

On June 25, 1982, 47 FR 27561, EPA promulgated revised regulations in 40 CFR Parts 51 and 52 which completely excluded, and permitted States to exclude, both types of vessel emissions from the determinations described above.

In sections 120–04–0801(b) and 120–04–0803(b), Virginia had modified the definition of "stationary source" to exclude emissions from vessels. Although this amendment may have been consistent with EPA requirements at the time of proposed adoption by Virginia, EPA is in the process of revising its policy of excluding vessel emissions based on recent litigation *(Natural Resources Defense Council v. EPA,* 726 F.2d 724 (D.C. Cir. 1984), in which the Court remanded EPA's promulgation for further consideration. Therefore, EPA will defer action on this proposed SIP revision until final Agency action consistent with this Court decision has been formulated. Until then, Virginia may not utilize the above-described vessel emissions exclusions.

On August 25, 1983, 48 FR 38742, EPA had proposed, but not promulgated, revisions to 40 CFR 51.165, 51.166, 52.21, 52.24 and Appendix S of Part 51 by revising the definition of "allowable emissions" and "potential to emit" to read that the emission rate of a stationary source could be restricted by either State-enforceable limits or federally-enforceable limits rather than both, as required by the current SIP. Virginia had similarly amended its definitions of "allowable emissions" and "potential to emit" in sections 120–04–0801(a) and 120–04–0803(a). EPA is in the process of reviewing its proposed rulemaking revisions on the State/federal enforceability issue as a result of ongoing litigation. Therefore, EPA will defer action on this proposed SIP revision until final Agency action has been formulated. Until EPA takes final action, Virginia cannot use its own enforceable limits to exempt sources from major source review that would not be exempt using only federally-enforceable limits.

Appendices

Virginia has amended the Appendices to its regulations, as described below:

A. For Appendix D [Forest Managment and Agricultural practices], the condition that prohibits the piling or bunching of material to be burned is deleted from the list of forest management practices. This Appendix is not part of the SIP, as this Appendix is related to Virginia's open burning provisions.

B. For Appendix E [Guidelines for Operation of Coal Refuse Disposal Areas], the existing provisions are repealed and replaced by new provisions which specify the public participation procedures for soliciting and utilizing input from interested parties for use in the formation and development of Board actions relative to the adoption, amendment or repeal of regulations.

C. For Appendix G [Standard Metropolitan Statistical Areas], the areas are updated to be consistent with the 1980 Federal Census.

D. For Appendix J [Emission Monitoring Procedures for Existing, New and Modified Sources], those provisions which affect only one source type are relocated to the rule containing the emission standards for that source type.

E. For Appendix K [Nonattainment Areas], all provisions addressing hydrocarbons are deleted.

F. For Appendix L [Prevention of Significant deterioration Areas], all provisions addressing hydrocarbons are deleted.

G. Appendix M [Control Technology Guidelines for Volatile Organic Compound Emissions] is deleted and the provisions thereof are relocated to the rule containing the emission standards for the affected source type.

H. Appendix Q [Interpretation of Emission Standards Based on Process Weight-Rate Tables] is added and explains how to interpret the emission limits based on process weight rate tables for those emission standards based on process weight rate.

I. Appendix R [New and Modified Sources Permit Exemption Levels], is added and identifies those facilities that are exempt from section 120–08–01.

Proposed Deletion of Current SIP Regulations

EPA is proposing to approve the deletion of a number of outdated or redundant regulatory provisions, from the currently-approved SIP. These deleted provisions consist of the following:

1. SIP Regulation 4.52—This regulation, applicable only to VOC sources located in the Virginia portion of the National Capital AQCR, was the original regulation adopted by Virginia to control emissions from sources of photochemically reactive organic compounds located in Northern Virginia. This regulation was approved by EPA prior to EPA's issuing of Round I, Round II and Round III Control Techniques Guideline (CTG) regulations. (See 40 CFR 52.2420 (c)(19), (c)(24)).

Since Virginia's adoption of VOC regulations based on EPA's CTG guidelines, the provisions of SIP regulation 4.52 have become outmoded, as the CTG regulations are more comprehensive than the provisions of SIP Rule 4.52.

2. Former Regulation 4.55(b), pertaining to plant-wide VOC emissions reduction plans, has been deleted. Since EPA had not approved section 4.55(b) as part of the SIP because of enforceability questions, the deletion of this provision is acceptable.

3. Former SIP Regulation 4.54(a), 4.55(a), 4.56(a) and 4.57(a), pertaining to general provisions pertaining to VOC control have been deleted as separate entities. However, the major provisions of these sections have been relocated into the "Applicability and Designation of Affected Facility" Section of Rules 4–11 and 4–24 through 4–39, as well as the "Standard for Volatile Organic Compounds" Sectioln in Rule 4–11. In certain rules, the exemptions included in the SIP-approved versions of the "general provisions" have been removed, thus making the proposed VOC regulations more stringent. This change was discussed in greater detail earlier in this notice.

Amendment to Rules 4–21, 4–23

Rule 4–21 (Sulfuric Acid Production Units) and 4–23 (Nitric Acid Production Units) are amended to conform with the revised standard formats for source-specific rules. These changes are not substantive. The amendments to regulation 120–04–2104 are proposed revisions of Virginia's 111(d) Plan for sulfuric acid mist, and will be addressed separately in this notice.

Amendments to Rule 4–13

Rule 4–13 (Kraft Pulp Mills) is also amended to conform with the revised standard format for source specific rules. Virginia has also amended Regulation 120–04–1304 by increasing the allowable opacity limit for recovery furnaces from that which is prescribed in Rule 4–2 to 35% at all times. Virginia justifies this change for three reasons:

(1) The standard conforms with current NSPS requirements as stated in 40 CFR, Subpart BB, § 60.282(a)(i)(ii).

(2) The standard represents a more realistic opacity level of current operations at the kraft pulping operation located in the State.

(3) Virginia has established the opacity limitation for kraft pulp mills as a mechanism for enforcing the general particulate regulation (section 120–04–1303), rather than as a control strategy for attaining and maintaining the national ambient air quality standards (NAAQS) for particulates.

The general particulate regulation for kraft pulp mills (former section 4.41(d)) remains unchanged, except that "stacks" and "vents" are now referred to as "units". Therefore, EPA has determined that the amendments to Rule 4–13 will have no adverse air quality impacts. Because the amended opacity regulation still conforms to current EPA and SIP requirements, EPA proposes approval of these amendments. Rule 4–13 also contains a standard for total reduced sulfur. EPA will review this regulation in a separate section 111(d) Plan action that Virginia intends to submit at a later time.

40 CFR Part 62

Virginia currently has an approved section 111(d) Plan for sulfuric acid mist. (See 40 CFR 62.1160). Virginia has submitted administrative amendments to section 120–04–2104, which refer to the standard for sulfuric acid mist. There are no substantive changes. Virginia's public hearings held for all of the SIP changes also meet the public hearing requirements of 40 CFR 60.23.

In view of the above evaluation, EPA proposes to approve the revision to Virginia's 111(d) Plan for sulfuric acid mist.

Conclusion

Based on EPA's review of the amendments and revised format of Virginia's air pollution control regulations, EPA is proposing to approve these changes as revisions of the Virginia SIP and section 111(d) Plan except for those positions which EPA does not regard to be part of the SIP. In addition, EPA will defer action on the proposed SIP revisions in Part VIII pertaining to vessel emissions exclusions and enforceability until final Agency action has been formulated. The Regional Administrator's decision to propose approval of the amendments to Virginia's air pollution control regulations is based on a determination that these proposed SIP revisions meet the requirements of sections 110(a)(2) and 111(d) of the Clean Air Act and 40 CFR Part 51, requirements for Preparation, Adoption and Submittal of State Implementation Plans, and 40 CFR Part 60, Section B. The public is invited to submit, to the EPA address stated above, comments on whether the proposed revisions to Virginia's SIP should be approved.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Sulfur oxides, nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Intergovernmental regulations, Reporting and recordkeeping requirements.

40 CFR Part 62

Air pollution control, Sulfuric acid mist, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: February 6, 1986.

James M. Seif,

Regional Administrator.

Editorial note: This document was received at the Office of the Federal Register October 14, 1987.

[FR Doc. 87–24124 Filed 10–16–87; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1001

Request for Comments on Developing Regulations for Anti-Kickback Provisions

AGENCY: Office of the Secretary, HHS, Office of Inspector General (OIG).

ACTION: Notice of intent to develop regulations.

SUMMARY: This notice requests comments on our intent to publish regulations as required by section 14 of Pub. L. 100–93. The purpose of these regulations will be to specify payment practices which, although potentially capable of inducing referrals of business under Medicare, are not to be considered kickbacks for purposes of criminal or civil remedies. Interested individuals and parties are requested to submit their comments by December 18, 1987.

DATES: To assure consideration, comments must be mailed and delivered to the address provided below by December 18, 1987.

ADDRESS: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–17–NI, Room 5246, 330 Independence Avenue SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 5643, 330 Independence Avenue SW., Washington, DC. In commenting, please refer to file code LRR–17–NI. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection beginning approximately two weeks after publication of this notice in Room 5643, 330 Independence Avenue SW., Washington, DC on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m., (202) 472–5270.

FOR FURTHER INFORMATION, CONTACT: Joel J. Schaer, Legislation, Regulations and Public Affairs Staff, (202) 472–5270.

SUPPLEMENTARY INFORMATION: Section 1128B(b) of the Social Security Act provides criminal penalties for individuals and entities participating in the Medicare or Medicaid programs that knowingly and willfully offer, pay, solicit or receive remuneration as an inducement for the referral of individuals for items and services under Medicare or Medicaid. These actions are defined as felonies and are subject, upon conviction, to fines of up to $25,000 and imprisonment of up to 5 years.

These provisions were previously codified at sections 1877 and 1909, but have since been recodified by section 4 of Pub. L. 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987. In addition, section 2 of Pub. L. 100–93 provides authority to exclude a person or entity from participation in the Medicare and Medicaid programs if it is determined that the party is engaged in a prohibited remuneration scheme. Finally, section 14 of Pub. L. 100–93 requires the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution under section 1128B(b) and that will not provide a basis for exclusion from the Medicare program or the State health care programs under section 1128(b)(7). The Secretary, in consultation with the Attorney General, is required to publish a proposed rule with regard to this provision within one year of enactment, and to promulgate final regulations within two years of enactment, specifying which payment practices will not be treated as a criminal offense and not serve as a basis for an exclusion.

In order to most effectively address issues raised by these amendments, we are requesting public comments from affected provider, practitioner, supplier and beneficiary representatives before developing proposed regulations. In particular, we are seeking from the public suggestions for generic criteria that can be applied to particular types of business arrangements to determine if they are inappropriate for civil or criminal sanctions. In addition, we invite descriptions of particular business arrangements that should be permissible under any regulatory scheme we develop. In either case, a narrative explanation of the justification for the suggestions would prove helpful in our drafting of proposed regulations.

(Secs. 1128(b)(7) and 1128B of the Social Security Act (42 U.S.C. 1320a–7(b)(7) and 1320a–7b)

(Catalog of Federal Domestic Assistance Programs No. 13.714, Medical Assistance Program; No. 13.773, Medicare-Hospital Insurance Program; No. 13.744, Medicare—Supplementary Medical Income Program)

Dated: August 28, 1987.

Richard P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: September 30, 1987.

Otis R. Bowen.

Secretary

[FR Doc. 87–24105 Filed 10–16–87; 8:45 am]

BILLING CODE 4150–04–M

Family Support Administration

45 CFR Part 400

Refugee Cash and Medical Assistance

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would amend current rules to change the period of eligibility for the special programs of refugee cash assistance (RCA) and refugee medical-assistance (RMA) from the 18-month period beginning with the first month a refugee entered the United States to the 12-month period beginning with such first month.

DATES: To assure consideration, comments should be received by December 3, 1987.

ADDRESSES: Comments should be addressed to Bill F. Gee, Director, Office of Refugee Resettlement, Department of Health and Human Services, Room 1229 Switzer Building, 330 C Street SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 1229 Switzer Building, 330 C Street SW., Washington, DC.

Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately three weeks after publication, at the above address on Monday through Friday of each week from 9:30 a.m. to 4:00 p.m., except Federal holidays.

Because of the large number of comments expected, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received during the comment period and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Ellen M. McGovern, (202) 245–1957.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 45 CFR 400.202 through 400.204 provide for Federal refugee funding, subject to the availability of funds, to be provided to States for cash and medical assistance for eligible refugees during their first 36 months in the United States. Such funding is provided to States for the non-Federal share of assistance if the refugee is eligible for the programs of aid to families with dependent children (AFDC), foster care maintenance payments under title IV–E of the Social Security Act, supplemental security income (SSI), adult assistance in the territories, and medical assistance (Medicaid) under Title XIX of the Social Security Act.

Current regulations also provide for Federal refugee funding, subject to the availability of funds, for a special program of refugee cash assistance (RCA) and refugee medical assistance (RMA) during a refugee's first 18 months in the U.S. and for the cost of general assistance (GA), including GA medical assistance (GMA), provided to eligible refugees under a State or local GA/GMA program during a refugee's second 18 months.

The RCA and RMA programs assist those refugees whose economic needs are equivalent to the economic needs required in a State's AFDC program but who do not meet the AFDC family-composition requirements or the SSI age or disability requirements.

Prior to 1982, RCA and RMA were available during an eligible refugee's first 36 months in the U.S. An interim final regulation published March 12, 1982 (at 47 FR 10841) reduced the period to the current 18 months. After the first 18 months, such refugees may seek assistance under a regular, ongoing State or local GA or GMA program. The 1982 regulation provided for Federal refugee funds to cover the cost of GA and GMA during a refugee's months 19–36 so that overall State costs of providing cash and medical assistance to refugees during their first 36 months in the U.S. would continue to be fully federally funded.

Effective March 1, 1986, this 36-month period was reduced to 31 months in order to implement the fiscal reductions imposed under Pub. L. 99–177, the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings).

Funding for cash and medical assistance under the refugee program for Federal fiscal year 1987 (October 1, 1986–September 30, 1987) was provided under the FY 1987 Continuing Resolution (Pub. L. 99–591) at the rate current for FY 1986. Therefore the time-limitation of 31 months has remained in effect in order to meet fiscal restrictions.

Thus, under current law, the entire cost of refugee cash and medical assistance is borne by the Federal Government during a refugee's first 31 months in the United States.

(None of the time-limits cited above apply to funding for assistance and services for unaccompanied minors under 45 CFR 400.205, nor would such funding be affected by this proposed rule.)

Regulatory Procedures

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regultory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order. This regulation would not increase costs; rather, it would decrease costs by decreasing Federal funding.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 604(b)), the Secretary certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain collection-of-information requirements which would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Description of the Regulation

Through this regulation, the Department proposes to reduce the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from 18 months to 12 months—a 6-month decrease. This change would result in estimated net savings of $14 million in FY 1988.

This proposed decrease has the following purposes:

a. To provide refugees with stronger incentives to gain employment and become self-sufficient as rapidly as possible after their arrival in the United States.

b. To reduce the likelihood of unnecessary welfare dependency resulting from extended periods of special support.

c. To reduce Federal expenditures to help meet the objectives of the Balanced Budget and Emergency Deficit Control Act of 1985.

d. To reduce the degree of special treatment afforded to refugees, which results in unequal treatment among low-income populations.

e. To reduce total refugee welfare costs while continuing to relieve States of the cost of cash and medical assistance provided to refugees during their initial period in the U.S.

Under this proposal, RCA and RMA would be available only during the first 12 months, and such refugees would seek assistance under a GA or GMA program beginning in their 13th month rather than in their 19th month as at present. Since, under this proposal, Federal refugee funding for GA/GMA would begin with a refugee's 13th month, no added financial burden would occur to States or localities as compared to the present policy of funding RCA/RMA during a refugee's first 18 months and GA/GMA beginning with a refugee's 19th month.

The extent of refugee eligibility for assistance would, however, be affected by this proposed reduction in RCA/RMA from 18 to 12 months. Since the RCA/RMA programs are generally more comprehensive than existing State or local GA/GMA programs, the assistance available to refugees who do not qualify for AFDC, SSI, or Medicaid would be reduced beginning with the 13th month rather than the 19th month. It is, in part, this difference in coverage between RCA/RMA and GA/GMA which could be expected to result in reduced Federal costs without increasing State or local costs. Similarly, this difference would also tend to reduce the likelihood of unnecessary welfare dependency by providing an earlier need for most RCA recipients to seek employment.

The majority of refugees now arriving in the United States receive extended periods of U.S. cultural orientation and English language instruction overseas before reaching this country—training which was not available when the 18-month limitation went into effect in 1982. We believe that the utility of this training can now be reflected in a shorter period of eligibility for special assistance that is not available to U.S. citizens or immigrants to the U.S.

List of Subjects in 45 CFR Part 400

Grant programs—social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: July 1, 1987.

Wayne A. Stanton,

Administrator, Family Support Administration.

Approved: August 20, 1987.

Otis R. Bowen,

Secretary of the Department of Health and Human Services.

45 CFR Part 400 is proposed to be amended as follows:

The authority citation for Part 400 continues to read as follows:

Authority: Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

2. In § 400.2, the definitions of "Refugee cash assistance" and of "Refugee medical assistance" are amended by removing, in each definition, "an 18-month period" and adding therefor "a 12-month period".

§ 400.203 [Amended]

3. In § 400.203, paragraph (b) is amended by removing "18-month period" and adding therefor "12-month period", and paragraph (c) is amended by removing "during the 18-month period beginning with the 19th month" and adding therefor "during the 24-month period beginning with the 13th month".

§ 400.204 [Amended]

4. In § 400.204, paragraph (b) is amended by removing "18-month period" and adding therefor "12-month period", and paragraph (c) is amended by removing "during the 18-month period beginning with the 19th month" and adding therefor "during the 24-month period beginning with the 13th month".

§ 400.209 [Amended]

5. In § 400.209, paragraph (b) is amended by removing "18 months" and adding therefor "12 months".

[FR Doc. 87-24004 Filed 10-16-87; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[Gen. Docket No. 86-337]

Automatic Transmitter Identification

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking; extension of deadline for comments and reply comments.

SUMMARY: Acting under delegated authority, the Chief, Office of Engineering and Technology has issued an *Order* extending the comment and reply comment deadlines for the *Further Notice of Proposed Rulemaking* released July 9, 1987, in General Docket No. 86-337. See 52 FR 26538, July 15, 1987.

This action is in response to an extension request from the Satellite Operators and Users Technical Committee.

DATES: Comments are now due by January 5, 1988, and reply comments by February 4, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Hudak, Field Operations Bureau, (202) 632–6977.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 87–24090 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–431, RM–5767; RM–5819]

Radio Broadcasting Services; Cottonwood, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on petitions for rule making filed by KVRD, Inc., to allot FM Channel 289A to Cottonwood, AZ, as that community's second local FM service (RM–5767), and by Central Broadcasting Company, licensee of Station KSMK(FM) (Channel 240A), Cottonwood, seeking to substitute FM Channel 240C for Channel 240A and modify its license accordingly, to specify operation on the higher class channel to provide that community with its first expanded coverage FM service.

DATES: Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Diane H. Ming, Esq., Gammon & Grange, 1925 K Street NW., Suite 300, Wash., DC 20006–1115 (Central Broadcasting Company); B. Jay Baraff, Esq., Baraff, Koerner, Olender & Hochberg, 2033 M Street NW., Suite 203, Wash., DC 20036 (KVRD, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–431, adopted September 17, 1987 and released October 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24157 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–252, RM–5099]

Radio Broadcasting Services; LeRoy and Urbana, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal filed by Tak Communications, Inc. to allocate FM Channel 223B1 to Urbana, Illinois, to delete Channel 280A from Urbana, and to modify the license of Station WKIO(FM) to specify operation on Channel 223B1. This document also orders the licensee of Station WKIO to show cause why its license should not be modified to specify operation on Channel 300A.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested persons should serve all parties to this proceeding or their counsel or consultants, as follows: Ralph W. Hardy, Jr., Dow, Lohnes & Albertson, 1225 23rd Street NW., Suite 500, Washington, DC 20037 (Counsel to Tak Communications, Inc.); William P. Bernton, Esq., 1875 Eye Street NW., Suite 1050, Washington, DC 20006 (Counsel to W. Russell Withers, Jr.); Merilyn M. Strailman, Esq., Wiley, Rein & Fielding, 1776 K Street NW., Washington, DC 20006 (Counsel to McLean County Broadcasters, Inc.); Gerald Mason, Esq., 1029 Pacific Street, P.O. Box 1648, San Luis Obispo, CA 93406 (Counsel to WIHN(FM), Normal, Illinois); Kathryn R. Schmeltzer, Esq., Fisher, Wayland, Cooper & Leader, 1255 Twenty-Third Street NW., Washington, DC 20037 (Counsel to WGPU(FM), Urbana, Illinois).

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–252, adopted September 4, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24086 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–416, RM–5770]

Radio Broadcasting Services; Cannelton, IN

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Martin L. Hensley proposing the allotment of FM Channel 275A to Cannelton, Indiana as that community's first FM channel.

DATES: Comments must be filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Martin L. Hensley, 1655 Oliver Street, Evansville, Indiana 47714 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–416 adopted September 4, 1987 and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24158 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–413, RM–5630]

Radio Broadcasting Services; Ligonier, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Erwin Draper proposing the allotment of FM Channel 274A to Ligonier, Indiana as the community's first FM broadcast service.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr., Attorney-at-Law, 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–413, adopted September 4, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24085 Filed 10–16–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–415, RM–5654]

Radio Broadcasting Services; West Lafayette, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bruce Quinn proposing the allotment of FM Channel 294A to West Lafayette, Indiana as that community's first FM broadcast service.

DATES: Comments must be filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Bruce Quinn, 824 South Hamilton Street, Delphi, Indiana 46923 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–415 adopted August 25, 1987 and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24093 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-418, RM-5769]

Radio Broadcasting Services; Sioux Rapids, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Donald A. Swanson proposing the allotment of FM Channel 275C2 to Sioux Rapids, Iowa as that community's first FM channel.

DATES: Comments must filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Donald A. Swanson, c/o Radio Station KTFC, Route 2, Sioux Rapids, Iowa (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-418 adopted September 4, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24095 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-419, Rm-5800]

Radio Broadcasting Services; Burlington, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Douglass R. Lawrence proposing the allotment of FM Channel 237A to Burlington, Kansas as that community's first FM channel. Finalization of this proposal is contingent upon the issuance of license to Station KHUM (Channel 239), Ottawa, Kansas to change its transmitter site and reduce it facilities to Class C1 status.

DATES: Comments must be filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John R. Wilner, Esq., Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street NW., Suite 1000, Washington, DC 20005 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-419, adopted September 4, 1987, and released October 13, 1987. The full text of this commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24096 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-412, RM-5914]

Radio Broadcasting Services; Litchfield, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Litchfield Broadcasting Corporation, proposing the substitution of Channel 235C2 for Channel 237A at Litchfield, Minnesota, and modification of the license for Station KLFD-FM, to specify the higher class channel. This proposal could provide a first wide coverage area station for Litchfield.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Herbert P. Gross, President, Litchfield Broadcasting Corporation, 2615 Brookridge Avenue, Golden Valley, Minnesota 55422.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–412 adopted September 4, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW; Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24084 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–411, RM–5864]

Radio Broadcasting Services; Owensville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Owensville Communications Company, proposing the substitution of Channel 237C2 for Channel 237A at Owensville, Missouri, and modification of its permit for Channel 237A at Owensville to specify the higher class of channel. This proposal could provide a first wide coverage area station for the community.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark Jones, Owensville Communications Company, 1028 Waterford Lane, Pensacola, Florida 32514.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–411, adopted September 4, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW. Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24087 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–94; RM–5584]

Radio Broadcasting Services; Mesquite, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petition.

SUMMARY: This document denies the request of Dale G. Gardner to allocate Channel 248C1 to Mesquite, Nevada, as the community's first local FM service. Petitioner failed to provide the requested information showing that Mesquite is a "community" for allotment purposes. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–94, adopted September 25, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (200) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24079 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–408, RM–6004]

Radio Broadcasting Services; Chillicothe, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wyandot Radio Corporation, licensee of Station WFCB–FM, Channel 232A, Chillicothe, Ohio, proposing to substitute Channel 232B1 for its Class A channel and the modification of its license to specify the higher powered channel. Channel 232B1 can be allocated to Chillicothe in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) east to avoid a short-spacing to Station WWNK–FM, Cincinnati, Ohio, and WSNY, Columbus,

Ohio. In compliance with Section 1.420(g) of the Commission's Rules, competing expressions of interest in use of the channel at Chillicothe will not be accepted. Canadian concurrence in the allocation is required since the community is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before November 30, 1987 and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Alan C. Campbell, Esq., Dow, Lohnes & Albertson, 1255–23rd Street NW., Suite 500, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–408, adopted September 11, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24088 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–409, RM–5940]

Radio Broadcasting Services; Middleport, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radio Mid-Pom, Inc., licensee of Station WMPO–FM, Channel 221A, Middleport, Ohio, requesting the substitution of Channel 221B1 for its Class A channel and the modification of its license to specify the higher powered allotment. Channel 221B1 can be allocated to Middleport in compliance with the Commission's minimum distance separation requirements with a site restriction of 23 kilometers (14.7 miles) northeast to avoid a short-spacing to Station WMEJ, Channel 220A, Proctorville, Ohio, and to Station WXGT, Channel 222, Columbus, Ohio. This proposal conflicts with the application of Lower Ohio Valley Educational Corporation to operate a noncommercial educational station on Channel 219A at Belpre, Ohio (ARN–860805MA). Canadian concurrence is required since Middleport is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–409, adopted September 11, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–24089 Filed 10–16–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86–287; RM–5556]

Radio Broadcasting Services, Ulysses, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses the request of Donna M. Venetz proposing the allocation of Channel 268A to Ulysses, Pennsylvania, as the community's first local FM service. Neither the petitioner nor any other party filed comments expressing a continuing interest in the allotment. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, MM Docket No. 86–287, adopted September 25, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24097 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-417, RM-5931]

Television Broadcasting Services; Lima and London, OH; Muncie, IN; Rockford, IL; Grand Rapids, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WKBN Broadcasting Corporation requesting the allocation of Channel 17 to Lima, Ohio, as the community's third local commercial television service and the substitution of noncommercial educational Channel *61 for unused and unapplied for Channel *17 at Muncie, Indiana. Grant of this request would represent a departure from the Commission's policy concerning the dereservation of noncommercial educational channels so as to make them available for commercial use. Therefore, WKBN is requested to show in its comments how the allocation of Channel 17 at Lima, as a commercial service, would better serve the public interest than its retention at Muncie for noncommercial educational service. Channel 17 can be allocated to Lima, Ohio, in compliance with the Commission's minimum distance separation requirements with a site restriction of 32.1 kilometers (19.9 miles) southwest to avoid a short-spacing to Channel 16 at Detroit, Michigan, which is reserved for land mobile use, and to Station KXMI, Channel 17, Grand Rapids, Michigan. In addition, the allocation of Channel 17 at Lima requires a change in offset designation for Station WXMI, Channel 17, Grand Rapids, Michigan, from "zero" to "minus" and for Station WTVO, Channel 17, Rockford, Illinois, from "minus" to "plus" and the addition of a 6.1 kilometer (4.1 mile) southeast site restriction on the pending proposal to allocate Channel 32 to London, Ohio (MM Docket No. 87-190, 52 FR 23569, published June 23, 1987. An *Order to Show Cause* is directed to the licensees of Stations WXMI and WTVO concerning the change in their offset designations. Petitioner is requested to state an intention to reimburse the licensees for the cost of the changeover. Canadian concurrence is required for the changes at Lima, and London, Ohio, Muncie, Indiana, and Grand Rapids, Michigan.

DATES: Comments must be filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John R. Wilner, Esq., Bryan, Cave, McPheeters & Roberts, 1015 Fifteenth Street NW., Suite 1000, Washington, DC 20005 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-417, adopted September 4, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24094 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-414, RM-5795]

Television Broadcasting Services; Junction City, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Chronicle Broadcasting of Omaha, Inc. proposing the substitution of UHF TV Channel 31 for VHF TV Channel 6 at Junction City, Kansas. The proposal would enable Station WOWT (Channel 6), Omaha, Nebraska, licensed to Chronicle Broadcasting of Omaha, Inc., to relocate its transmitter site and improve its coverage area.

DATES: Comments must be filed on or before December 4, 1987, and reply comments on or before December 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James P. Riley, Esq., Fletcher, Heald Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-414 adopted September 4, 1987 and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24092 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-410, RM-5802]

Radio Broadcasting Services; Waterbury, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Harvest Broadcasting, Inc., licensee of Station WGLY-FM, proposing the substitution of Channel 276C2 for 276A at Waterbury and modification of its license to specify the higher class frequency. The proposal could provide a first wide area coverage station at Waterbury. A site restriction of 7.9 kilometers (4.9 miles) northwest of the community is required. Also concurrence by the Canadian government is required.

DATES: Comments must be filed on or before November 30, 1987, and reply comments on or before December 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Brian Dodge, Harvest Broadcasting Services, Box 105FM, Hinsdale, NH 03451 (Consultant for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-410, adopted September 4, 1987, and released October 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24159 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-456, RM-4632]

Television Broadcasting Services; Crandon, WI and Minneapolis-St. Paul, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document orders WCCO Television, Inc., licensee of Station WCCO-TV, Minneapolis-St. Paul, Minnesota, to show cause by written protest why the Station WCCO-TV license should not be modified to specify a channel offset of "plus" in lieu of "zero", in order to accommodate a proposed Channel 4 allotment at Crandon, Wisconsin.

DATE: Response must be filed on or before November 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve these parties, or their counsel, as follows: WCCO Television, Inc., c/o Fly, Shuebruk, Gaguine, Boros and Braun, Suite 1759, 45 Rockefeller Plaza, New York, New York 10111; Forest County Television Company, c/o Arter and Hadden, 1919 Pennsylvania Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's order to show cause, MM Docket No. 84-456, adopted September 16, 1987, and released October 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24091 Filed 10-16-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

Draft Environmental Assessment; Falconry and Raptor Propagation Regulations; Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: In the July 10, 1987, Federal Register (at 52 FR 26030) the Fish and Wildlife Service announced the availability of Draft Environmental Assessment: Falconry and Raptor Propagation Regulations and set the closing date for public comment at September 30, 1987. Based on comments and inquiries received to date by the Service, an extension of the public comment period is warranted. Therefore, the closing date for public

comment on the Draft is extended to November 15, 1987.

DATE: Written comments are requested by November 15, 1987.

ADDRESSES: Copies of the Draft can be obtained by writing to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Washington, DC 20240, or by visiting the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, 1717 H Street NW., Washington, DC 20240. Written comments can be sent to the same addresses.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC 20240 (202–254–3207).

Date: October 8, 1987.

Steven Robinson,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 87–24141 Filed 10–16–87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 630, 638, 640, 641, 642, 645, 646, 649, 650, 652, 654, 655, 658, 663, 669, 672, 674, 675, 676, 680, 681, and 683

[Docket No. 60109–7091]

Domestic Fishing Regulations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to standardize the definition of *Vessel of the United Staes* for all domestic fishery regulations promulgated under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The definition has been recently modified, but not all regulations have been changed accordingly. The intended effect of this action is to incorporate these changes into those regulations that currently need updating.

DATES: Written comments must be received on or before November 16, 1987.

ADDRESS: Comments should be sent to: Richard H. Shaefer, National Marine Fisheries Service, 1825 Connecticut Ave. NW., Washington, DC 20035.

FOR FURTHER INFORMATION CONTACT: Marilyn Luipold, Office of General Counsel, 202–673–5206.

SUPPLEMENTARY INFORMATION: Current domestic fishing regulations promulgated under the Magnuson Act are not consistent in defining *Vessel of the United States.* Although some regulations have been modified to incorporate changes required by the repeal of the Federal Boat Safety Act of 1971, this action is necessary to standardize the definition in all domestic fishing regulations.

In the interest of completeness, the definition proposed in this action also clarifies that unpowered vessels used exclusively for pleasure are vessels of the United States. The status of these vessels requires clarifiation because existing definitions rely on the documentation requirements of Chapter 121 of Title 46, U.S.C., which apply only to vessels of at least 5 net tons, and the provisions of Chapter 123 of Title 46, U.S.C., which only require numbering of undocumented vessels equipped with propulsion machinery. Implementation of the definition proposed in this action ensures that small, unpowered, recreational vessels owned by U.S. citizens are vessels of the United States under Magnuson Act regulations.

Classification

NOAA issues this proposed rule to standardize the definition of *Vessel of the United States* for all domestic fishery regulations promulgated under the Magnuson Act. This action is categorically excluded from the requirements to prepare an environmental assessment by NOAA Directive 02–10. The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. While few instances of unpowered vessels fishing in the exclusive economic zone under Magnuson Act retrictions are anticipated, clarification of the status of small unpowered vessels used exclusively for pleasure will avoid confusion. The proposed rule will affect the fishing operations of few, if any, vessels and will not impose a significant cost on those vessels.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act. The Administrator of NOAA determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 630 through 683

Fisheries.

Dated: October 14, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated above, 50 CFR Parts 630, 638, 640, 641, 642, 645, 646, 649, 650, 652, 654, 655, 658, 663, 669, 672, 674, 675, 676, 680, 681 and 683 are proposed to be amended as follows:

PARTS 630, 638, 640, 641, 642, 645, 646, 649, 650, 652, 654, 655, 658, 663, 669, 672, 674, 675, 676, 680, 681, and 683—[AMENDED]

1. The authority citation for 50 CFR Parts 630 through 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. 50 CFR Chapter VI is amended by revising the definition of *Vessel of the United States* in the designated sections to read as follows:

§§ 630.2, 638.2, 640.2, 641.2, 642.2, 645.2, 646.2, 649.2, 650.2, 652.2, 654.2, 655.2, 658.2, 663.2, 669.2, 672.2, 674.2, 675.2, 676.2, 680.2, 681.2, 683.2 [Amended]

* * * * *

Vessel of the United States means:

(a) Any vessel documented under Chapter 121 of Title 46, United States Code;

(b) Any vessel numbered under Chapter 123 of Title 46, United States Code, and measuring less than 5 net tons;

(c) Any vessel numbered under Chapter 123 of Title 46, United States Code, and used exclusively for pleasure, and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

* * * * *

[FR Doc. 87–24140 Filed 10–16–87; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 201
Monday, October 19, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Resource Conservation and Development Program; Determination of Primary Purpose of Program Payments and Benefits for Consideration as Excludable from Income

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that certain payments and benefits that result under the Resource Conservation and Development Program, (Pub. L. 74–46, 16 U.S.C. 590a–f; Pub. L. 87–703, as amended, 7 U.S.C. 1010 through 1011; and Pub. L. 97–98, 16 U.S.C. 3451 through 3461), are made primarily for the purpose of conserving soil, protecting or restoring the environment, or providing a habitat for wildlife. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments and benefits to exclude them for gross income to the extent allowed by the Internal Revenue Service (IRS).

FOR FURTHER INFORMATION CONTACT: Director, Basin and Area Planning Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013, (202) 382–8767.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain payments made to individuals under Federal programs may be excluded form the recipient's gross income for Federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." The Secretary of Agriculture evaluates the conservation program on the basis of criteria set forth in 7 CFR Part 14, and makes a " primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these programs do not substantially increase the annual income derived from the property benefited by the payments.

The Resource Conservation and Development Program is authorized by Pub. L. 74–46, 16 U.S.C. 590a–f; Pub. L. 87–703, as amended, 7 U.S.C. 1010–1011; and Pub. L. 97–98, 16 U.S.C. 3451–3461. It is funded through annual appropriations to the Soil Conservation Service of the U.S. Department of Agriculture. It is the purpose of the Resource Conservation and Development Program to:

1. Accelerate the conservation, development, and utilization of natural resources to improve the general level of economic activity.

2. Enhance the environment and standard of living in authorized RC&D areas.

In accordance with section 126(a)(9) the Secretary of the Treasury has determined that the Resource Conservation and Development Program authorized by Pub. L. 74–46, 16 U.S.C. 590a–f; Pub. L. 87–703, as amended, 7 U.S.C. 1010 through 1011; and Pub. L. 97–98, 16 U.S.C. 3451 through 3461, is a program under which payments may be considered for exclusion eligibility (26 CFR Part 16A; 46 FR 27636, May 21, 1981). The Resource Conservation and Development Program provides technical and financial assistance to landowners, occupiers and operators for installing works of improvement for critical area treatment, flood prevention, public water-based fish and wildlife, public water-based recreation, farm irrigation, land drainage, and water quality improvement. Financial assistance is provided through locally managed RC&D councils and agreements with landowners, occupiers and operators individually or collectively. The agreements are based on measure plans developed with and approved by the RC&D council. The agreement provides for installing the complete plan within a period not to exceed 10 years. The plan typically provides for implementation of those practices needed to develop, manage, and conserve the natural resources of lands covered by the agreement.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A "Resource Conservation and Development Program Determination for Federal Tax Purposes" record of decision has been prepared and is available upon request from the Director, Basin and Area Planning Division, Soil Conservation Service, United States Department of Agriculture, P.O. Box 2890, Washington, DC 20013.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Resource Conservation and Development Program. In accordance with the criteria set out in 7 CFR Part 14, the review determined that payments made and benefits provided under this program are for development, management, and conservation of natural resources.

Therefore, the Secretary of Agriculture hereby gives notice that in accordance with the criteria set out in 7 CFR Part 14, all payments to landowners, operators, and occupiers made under the Resource Conservation and Development Program are determined to be primarily for the purpose of conserving soil and water or protecting or restoring the environment.

Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to excluse from gross income, for federal income tax purposes, payments made and benefits resulting from the Resource Conservation and Development Program.

Signed at Washington, DC, on October 8, 1987.

Richard E. Lyng,

Secretary.

[FR Doc. 87-24116 Filed 10-16-87; 8:45 am]

BILLING CODE 3410-01-M

Commodity Credit Corporation

Proposed Determinations With Regard to the 1988 Rice Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1988 crop of rice: (a) The loan and purchase level; (b) loan rate adjustments; (c) whether the Secretary should require producers to purchase marketing certificates as a condition of permitting loan repayment at a reduced level; (d) whether the Secretary should make loan deficiency payments available to producers; (e) the level of established (target) price; (f) whether an acreage limitation program (ALP) should be implemented and, if so, the percentage reduction under such ALP; (g) whether an optional land diversion program should be established and, if so, the percentage of diversion under the program; (h) the national program acreage (NPA); (i) whether a voluntary reduction percentage should be proclaimed and, if so, the level of such percentage; (j) whether a portion of the deficiency or diversion payments should be made in the form of commodity certificates or other in-kind compensation; (k) the provisions of a marketing certificate program; (l) whether an inventory reduction program should be implemented; and (m) other related determinations. These determinations are to be made in accordance with the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act"), the Food Security Act of 1985, as amended, and the Commodity Credit Corporation Charter Act, as amended.

EFFECTIVE DATE: Comments must be received on or before November 18, 1987 in order to be assured of consideration.

ADDRESS: Orval Kerchner, Acting Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Gene Rosera, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 or call (202) 447-5954. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impacts of implementing each option is being prepared and will be available soon.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the Federal assistance programs to which this notice applies are: Title-Rice Production Stabilization: Number 10.065 and Title-Commodity Loans and Purchases: Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On April 28, 1987 (52 FR 15362) a notice of proposed determinations was published which set forth provisions common to the 1988 wheat, feed grain, upland cotton, and rice price support and production adjustment programs. Any comments that were received with respect to such notice which are applicable to the 1988 crop of rice and any comments received with respect to this notice of proposed determinations will be reviewed in determining the provisions of the 1988 Rice Program.

Accordingly, the following program determinations with respect to the 1988 crop of rice are to be made by the Secretary.

Proposed Determinations

a. Loan and Purchase Level

Section 101A(a) of the 1949 Act provides that the Secretary shall make loans and purchases available to producers for the 1988 crop of rice at a level that is not less than the higher of: (1) 85 percent of the simple average price received by producers, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of rice, excluding the year in which the average price was the highest and the year in which the average price was the lowest; or (2) $6.50 per hundredweight. Under that subsection the loan level for a crop of rice may not be reduced by more than 5 percent from the loan level determined for the preceding crop. Further, section 101A(a) requires that the Secretary determine and announce the loan and purchase level for the 1988 crop of rice not later than January 31 of 1988. A loan shall have a term of not more than 9 months beginning after the month in which the application for the loan is made.

Comments are requested as to the level of the loan and purchase rate for the 1988 crop of rice.

b. Loan Rate Adjustments

Section 403 of the 1949 Act provides that appropriate adjustments may be made in the level of the support price for rice for differences in grade, type, quality, location, and other factors. Section 403 further provides that such adjustments shall, insofar as practicable, be made in such manner that the average support price will, on the basis of the anticipated incidence of such factors, equal the statutory support level.

Consideration is being given to: (1) Adjusting the grade discounts applied to the loan repayment level in order to reflect the relationship of the loan repayment level to the loan level; (2) establishing farm-stored class loan rates on the basis of individual State milling outturns rather than national average milling outturns; and (3) establishing the loan rate differential and class milled rice rates (value factors) after publication and taking into consideration the estimated 1988 crop plantings.

Comments, along with supporting data, are requested as to: (1) The loan and purchase rate for different classes of whole kernels; (2) the loan and purchase rate for broken kernels; (3) appropriate state or national average milling outturns for use in determining class loan rates; (4) appropriate grade discounts; and (5) adjusting grade discounts applied to the loan repayment level and the loan level.

c. Marketing Loan Certificates

Section 101A(a)(5)(A) of the 1949 Act provides that the Secretary shall permit a producer to repay a loan at a level that

is the lesser of: (1) The loan level determined for such crop or (2) the higher of the loan level multiplied by 60 percent of the prevailing world marketing price for rice, as determined by the Secretary. Further this section provides that as a condition of permitting a producer to repay a loan, the Secretary may require a producer to purchase marketing certificates equal in value to an amount that does not exceed one-half the difference, as determined by the Secretary, between the amount of the loan obtained by the producer and the amount of the loan repayment. Such certificates shall be negotiable and shall be redeemable for rice owned by the Commodity Credit Corporation ("CCC") valued at the revailing market price, as determined by the Secretary. If CCC-owned rice is not available in the State in which the rice pledged as collateral for the loan was produced or at such other location outside of such State as may be approved by the owner of such certificate, such certificate shall be redeemable for cash. If any such certificate is not presented for marketing within a reasonable number of days after issuance, as determined by the Secretary, reasonable costs of storage and other carrying charges shall be deducted from the value of the certificate.

Comments are requested on whether the Secretary should require producers to purchase certificates and, if so, for what percentage of the difference in value between the loan level and the loan repayment rate. Comments are also requested with respect to the amount of time CCC should allow such certificates to be held before they are discounted.

d. Loan Deficiency Payments

Section 101A(b)(1) of the 1949 Act provides that the Secretary may make payments available to producers who, although eligible to obtain a loan or purchase agreement, agree to forgo obtaining such loan or agreement in return for such payments.

Such payments shall be computed by multiplying: (1) The loan payment rate by (2) the quantity of rice the producer is eligible to place under loan. The quantity of rice eligible to be placed under loan may not exceed the product obtained by multiplying the individual farm program acreage for the crop by the farm program payment yield established for the farm. The loan payment rate is the amount by which the loan level determined for such crop exceeds the level at which a loan may be repaid. Section 101A(b) further provides that the Secretary shall make up to one half the amount of such payments available in the form of negotiable marketing certificates redeemable for CCC-owned rice.

Comments are requested with respect to whether loan deficiency payments should be made available and, if so, what portion should be made in the form of certificates.

e. Established (Target) Price

Section 101A(c)(1)(A) of the 1949 Act provides that the Secretary shall make payments available to producers for the 1988 crop of rice in an amount computed by multiplying (1) the payment rate, by (2) the individual farm program acreage, by (3) the farm program payment yield.

Section 101A(c)(1)(C) provides that the payment rate for the 1988 crop of rice shall be the amount by which the established (target) price for the crop exceeds the higher of: (1) The national average market price received by producers during the first five months of the marketing year for such crop or (2) the loan level for such crop. Section 101A(c)(1)(D) of the 1949 Act provides that the established (target) price for rice shall be not less than $11.30 per hundredweight for the 1988 crop.

Comments are requested as to the level of the established price for 1988-crop rice, and whether the Secretary should make a portion of the 1988 rice crop deficiency payment in the form of commodity certificates.

f. Average Limitation Program

Section 101A(f)(1)(A) of the 1949 Act provides that if the Secretary determines that the total supply of rice, in the absence of an acreage limitation program (ALP), will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may implement an ALP. The section provides that in making such a determination the Secretary shall take into consideration the number of acres placed in the conservation acreage reserve established under section 1231 of the Food Security Act of 1985. If the Secretary elects to implement an ALP for 1988, the Secretary shall announce any such program not later than January 31 of 1988.

The Secretary shall, to the maximum extent practicable, carry out an ALP for a crop of rice in a manner that will result in a carryover of 30 million hundredweight of rice. If an ALP is announced for a crop of rice such reduction in production shall be achieved by applying a uniform percentage reduction (not to exceed 35 percent) to the rice crop acreage base for the crop for each rice-producing farm. Except as provided under the Inventory Reduction Program, producers who knowingly produce rice in excess of the permitted rice acreage for the farm, shall be ineligible for rice loans, purchases, and payments with respect to that farm.

The 1987-crop ALP is 35 percent. Comments are requested with respect to the need for an ALP, the appropriate level of reduction under an ALP, and other provisions of such program.

g. Land Diversion Program (LDP)

Section 101A(f)(4)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of rice, whether or not an ALP is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of rice to desirable goals. Such land diversion payments shall be made available to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

Any acreage reduction under an LDP would be at a producer's option. If such a program were implemented, the Secretary proposes to make payments in the form of cash or commodity certificates.

Comments are requested with respect to the need for an optional paid LDP, appropriate payment rates, and the other provisions of such program.

h. National Program Acreage (NPA)

Section 101A(d) of the 1949 Act provides that the Secretary shall proclaim a National Acreage (NPA) for the 1988 crop of rice not later than January 31, 1988. The NPA shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the crop for which

the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year 1988/89. If the Secretary determines that carryover stocks of rice are excessive or that an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the NPA by the amount the Secretary determines will accomplish the desired increase or decrease in carryover stocks. The Secretary may later revise the NPA if the Secretary determines it to be necessary based upon the latest information. If an acreage limitation program is implemented for the 1988 crop of rice, the NPA shall not be applicable to such crop. If required, the likely NPA for the 1988 crop of rice would be:

1. Estimated Domestic Use, 1988/89.	78.2 million cwt.
2. Plus Estimated Exports, 1988/89...	85.0 million cwt.
3. Minue Imports	2.5 million cwt.
4. Plus Stock Adjustment	4.0 million cwt.
5. Divided by National Weighted Average Farm Program Payment Yield.	50.51 cwt./acre.
6. Equals 1988-crop NPA	3.26 million acres.

Comments on the NPA and the appropriate carryover level for the 1988 crop of rice, along with supporting data, are requested.

i. Whether a Voluntary Reduction Percentage Should Be Proclaimed and, if so, the Level of Such Voluntary Reduction Percentage

Section 101A(d)(3)(B) of the 1949 Act provides that the 1988 individual farm program acreage of rice may not be further reduced by application of an allocation factor (not less than 80 percent nor more than 100 percent) if the producer voluntarily reduces the acreage of rice planted for harvest on the farm from the 1988-crop rice acreage base established for the farm by at least the percentage recommended by the Secretary in the proclamation of the NPA for the 1988 crop.

If an acreage limitation program is implemented for the 1988 crop of rice, the voluntary reduction percentage shall not be applicable to such crop. If required, the likely national recommended voluntary reduction percentage for the 1988 crop of rice would be:

1. 1988 Established Rice Acreage Base.	4.24 million acres.
2. Minus 1988 Preliminary NPA	3.26 million acres.
3. Equals Acreage Reduction Needed from Acreage Base.	98 million acres.
4. Divided by 1988 Rice Acreage Base.	4.24 million acres.
5. Equals 1988-Crop Recommended Reduction Percentage.	23.1 percent.

Comments from interested persons with respect to the voluntary reduction percentage, if any, are requested.

j. Commodity Certificates

Section 107E of the 1949 Act provides that, in making in-kind payments under any rice program, other than those programs which provide for payments in the form of negotiable marketing certificates, the Secretary may: (1) Acquire and use commodities that have been pledged to CCC as security for price support loans, including loans made to producers under the farmer-owned reserve program and (2) use other commodities owned by CCC.

The Secretary may make such in-kind payments: (1) By delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; (2) by the transfer of negotiable warehouse receipts; (3) by the issuance of certificates which CCC shall redeem for a commodity; and (4) by such other methods as the Secretary determines appropriate to enable the producer to receive payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

Accordingly, comments are requested with respect to the use of commodity certificates in making payments under the 1988 rice program.

k. Marketing Certificates

Section 603 of the Food Security Act of 1985 provides that whenever, during the period beginning August 1, 1986, and ending July 31, 1991, the world price for a class of rice (adjusted to United States qualities and location), as determined by the Secretary of Agriculture, is below the current loan repayment rate for that class of rice, to make United States rice competitive in world markets and to maintain and expand exports of rice produced in the United States, under such regulations as the Secretary may prescribe, CCC shall make payments to persons who have entered into an agreement with CCC to participate in the program established by this section. Such payments shall be made in the form of negotiable marketing certificates. Such certificates shall be in such monetary amounts and subject to such terms and conditions as the Secretary determines will make rice produced in the United States available at competitive prices.

The value of each certificate shall be based on the difference between the loan repayment rate for the class of rice and the prevailing world market price for the class of rice, as determined by the Secretary.

Comments are requested with respect to the provisions of the marketing certificate program for rice.

l. Inventory Reduction Program (IRP)

Section 101A(g) of the 1949 Act provides that the Secretary may make payments available to producers who: (1) Agree to forgo obtaining a loan or purchase agreement; (2) agree to forgo receiving deficiency payments; and (3) do not plant rice for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under the announced acreage limitation program. Such payments shall be made in the form of rice owned by CCC and shall be subject to the availability of such rice. Payments under this program shall be determined in the same manner as loan deficiency payments.

Comments are requested on whether the IRP should be implemented for the 1988 crop of rice.

m. Other Related Provisions

A number of other determinations such as commodity eligibility and other provisions must be made in order to carry out the rice loan and purchase programs.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: Secs. 101A and 107E of the Agricultural Act of 1949, as amended, 99 Stat. 1419, as amended, 1448 (7 U.S.C. 1441–1 and 1445e); sec. 603 of the Food Security Act of 1985, 99 Stat. 1429 (7 U.S.C. 1441–1a).

Signed at Washington, DC, on October 14, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–24143 Filed 10–14–87; 4:06 pm]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Western Pacific Spiny Lobster Log
Form Number: Agency—N/A; OMB—0648–0016
Type of Request: Revision of a currently approved collection
Burden: 12 respondents; 102 reporting hours
Needs and Uses: Lobster fishermen in designated areas of the Western Pacific will be required to submit logbooks and other catch/sales information. The data will be used by the National Marine Fisheries Service for the management of the fishery
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 395–7340

Agency: National Oceanic and Atmospheric Administration
Title: Federal Fisheries Permit Amendment O
Form Number: Agency—N/A; OMB—0648–0097
Type of Request: Revision of a currently approved collection
Burden: 33 respondents; 4 burden hours
Needs and Uses: Fishermen of lobsters in designated areas of the Western Pacific will be required to apply for a permit. The information will be used to enumerate participants and acquire other data for management use.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Officer Building, Washington, DC 20503.

Dated: October 13, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–24145 Filed 10–16–87; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF DEFENSE

Department of the Navy

Navy Resale Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Navy Resale System Advisory Committee will meet on November 14, 1987, in the White and Gold Suite, The Plaza Hotel, 5th Avenue at 59 Street, New York, New York 23510. The meeting will consist of two sessions: The first from 8:00 a.m. to 8:50 a.m.; and the second from 9:00 a.m. until 4:30 p.m. The purpose of the meeting is to examine policies, operations, and organization of the Navy Resale System and to submit recommendations to the Secretary of the Navy. The agenda will include discussions of the organization of the Resale System, planning, financial management, merchandising, field support, and industrial relations.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting be closed to the public because it will involve discussions of information pertaining solely to trade secrets and confidential commercial or financial information. These matters fall within the exemptions listed in subsections 552b (c)(2)(4), and (9)(B) of WR 18 April 86 Title 5, United States Code. Therefore, the second session will be closed to the public.

For Further Information Contact: Commander W.T. Kaloupek, SC, USN, Naval Supply Systems Command, NAVSUP 09B, Room 606, Crystal Mall, Building No. 3, Arlington, Virginia 22202, Telephone Number: (202) 695–5457.

Date: October 14, 1987.

Jane M. Virga,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87–24150 Filed 10–16–87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on October 29–30, 1987. The meeting will be held at offices of Commander-in-Chief, U.S. Atlantic Fleet, Norfolk, Virginia. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on October 29 and 30, 1987. All session of the meeting will be closed to the public.

The purpose of the meeting is to provide briefing and tours for the committee members on command and control systems capabilities. The agenda will include technical briefings, tours and discussions addressing C2 and interoperability issues. These briefings, tours and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably interwinded as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For Further Information Contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: October 13, 1987.

Jane Virga,

Lieutenant, JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.

[FR Doc. 87–24151 Filed 10–16–87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.087]

Applications for New Awards Under Part B, Indian Education Act of 1972, as Amended, Indian Fellowship Program, for Fiscal Year 1988

Purpose: Enables Indian students to pursue courses of study leading to: (a) Postbaccalaureate degrees in medicine, psychology, law, education, clinical psychology, and related fields, or (b) undergraduate or graduate degrees in business administration, engineering, natural resources, and related fields.

Deadline for Transmittal of Applications: February 8, 1988.

Applications Available: December 8, 1987.

Available Funds: The President's budget request for this program for Fiscal Year 1988 is $1,461,000 which would provide approximately $500,000 for new awards. The remaining funds would be used for continuation awards. The Congress has not yet passed the Fiscal Year 1988 appropriation for this program. The estimates below assume passage of the President's request.

Estimated Range of Awards: $600–$24,000.

Estimated Average Size of Awards: $8,064.

Estimated Number of Awards: 62.

Project Period: 12–48 months. It is anticipated that approximately 70 percent of the awards will be approved for up to 48 months.

Program Information: The Secretary is not establishing any priorities among the allowable fields of study in 34 CFR 263.4 of the final regulations. However, section 4133(b)(2)(B) of the Drug-Free Schools and Communities Act of 1986 (Title IV, Subtitle B of Pub. L. 99–570) amended section 423 of the Indian Education Act to provide that "[n]ot more than 10 percent of the fellowships [under the Indian Fellowship Program] shall be awarded on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education." It is important that applicants who intend to receive training in the priority area indicate in their applications not only the allowable field of study, such as education or psychology, in which they are seeking a degree, but also that they are "receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education." The estimated maximum stipend allowed will be $750.00 per month. An estimated maximum allowance of $110.00 per month will be allowed for each dependent.

Applicable Regulations: The Indian Fellowship Program Regulations, 34 CFR Part 263.

For Applications or Information Contact: Dorothea Perkins, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, Washington, DC 20202. Telephone (202) 732–1909.

Program Authority: 20 U.S.C. 3385b.

Dated: October 13, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary education.

[FR Doc. 87–24076 Filed 10–16–87; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Board on International Education Program; Meeting

AGENCY: National Advisory Board on International Education Programs, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATE: November 6, 1987.

ADDRESS: U.S. Department of Education, The Horace Mann Learning Center, (The Stewart Room), 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Harry M. Gardner, Executive Director, NABIEP, Postsecondary Relations Staff, 7th & D Streets SW., Room 4907, Washington, DC 20202, Telephone: 202–732–1862.

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended by the Education Amendments of 1986 (Pub. L. 99–498; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public.

The agenda includes oath of office ceremonies for new and reappointed members; continuing discussion of the Federal role regarding international education; update on grants and the Center for International Education Programs and general Board business for Fiscal Year 1988.

Records are kept on the Board proceedings and are available for public inspection at the Office of Postsecondary Relations staff, from 8 a.m. to 4 p.m., ROB–3, 7th & D Streets, SW., Room 3915, Washington, DC

Signed in Washington, DC, on October 14, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–24137 Filed 10–16–87; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3278–6]

Construction Grant Eligibility of Income Generating Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Assistant Administrator for Water has established Agency policy on the construction grant eligibility of income generating facilities under the construction grants program. This statement of policy is needed to clarify any ambiguities that exist in the current program funding policy regarding the eligibility of income generating facilities. The policy defines the limits of grant participation in income generating facilities in which a municipality has a financial interest.

FOR FURTHER INFORMATION CONTACT: Walter Brodtman, Municipal Construction Division (WH–547), Environmental Protection Agency, Washington, DC 20460, (202) (382–5843).

EFFECTIVE DATE: This policy is effective October 5, 1987.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to communicate an Agency policy regarding the eligibility of income generating facilities for funding under the municipal treatment works construction grants program.

In the context of recent discussions, it has come to our attention that there is some ambiguity in current program funding policy regarding the eligibility of those portions of wastewater treatment facilities that will create a source of income generation for the grantee's municipality.

Therefore, after the effective date of this policy, the eligibility of income generating facilities for new construction grant project awards should be determined in accordance with the following criteria:

Section 201(d) of the Clean Water Act encourages wastewater treatment management which provides for the recycling of pollutants through the production of agriculture, silviculture or aquaculture; and for the construction of revenue producing facilities. In conformance with this stated intent of Congress, EPA has vigorously promoted wastewater land treatment and sludge utilization processes under its construction grants program. These processes, which have the potential for generating project income to offset the operation and maintenance (O&M) costs of a grantee, must be intensively reviewed by EPA to ensure unreasonable increases in construction costs are not allowed.

The criteria that follow apply specifically to stabilized and processed

sludges which are to be managed for income generation, and to crops which are grown for sale as an integral part of the wastewater land treatment or sludge utilization process. However, the principles illustrated by the sludge and crop examples should be relied upon in grant allowability decisions involving all projects that include income generation.

Facilities built for processing crops grown on land to which sludge or wastewater has been applied may be an allowable cost if the municipality has a financial interest in the crop and if those facilities are necessary and reasonable to cost-effectively prepare the crop for prompt delivery to its market. Crop processing facilities could involve grain drying or fermenting. Facilities and equipment for transporting the crop to market or storing the crop to await more favorable market prices are unallowable.

Facilities built for processing sludge into marketable products such as compost or heat-dried pellets may be allowable if the municipality has a financial interest in the product and if those facilities are necessary and reasonable to cost-effectively prepare the product for prompt delivery to its market. Processing facilities could include the composting facility plus holding capacity for final stabilization of the compost product. Processing could also include the drying and pelletizing operation when this approach has been selected to stabilize the sludge. Facilities to store the marketable products to get more favorable prices; to transport the product for sale to a market; or to optimize marketing of the stabilized sludge, such as bagging operations, are not allowable.

Funding decisions made on construction grant projects awarded before the issuance of this policy are not affected. Those funding decisions will continue to be assessed based on program policy in effect at the time of the decision.

Dated: October 5, 1987.

Lawrence Jensen,

Assistant Administrator for Water.

[FR Doc. 87-24125 Filed 10-16-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3279-1]

National Drinking Water Advisory Council; Open Meeting

Under section (10)(a)(2) of Pub. L. 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended, will be held at 9:00 a.m. on November 5, 1987 and 8:30 a.m. on November 6, 1987, in the Boardroom, The St. James, 950 24th Street, NW., Washington, DC. Council Subcommittee will be meeting at the U.S. EPA Headquarters, 401 M Street, SW., November 2 and 3, 1987.

The main purpose of the meeting will be to consult the Council on the implementation of the Safe Drinking Water Act Amendments. There will be a panel discussion on Class V Wells and presentations on the impact of the Safe Drinking Water Act on the water industry. Mr. Michael Cook, Director, Office of Drinking Water and Ms. Marian Mlay, Director, Office of Ground Water Protection will update the Council on program activities. A report on the National Pesticide Survey will be given in addition to Reports by the following Council Subcommittees: Health, Science and Standards; Ground Water; Underground Injection Control; Public Water Systems/State Programs; and Legislation/Public Outreach.

This meeting will be open to the public. The Council encourages the hearing of outside statements and has scheduled one hour on November 5 from 5:00 p.m. to 6:00 p.m. for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone (202) 382-2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before October 29, 1987.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at the Council meeting and will be part of the permanent meeting record.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Charlene E. Shaw, Executive Secretary, National Drinking Water Advisory Council, Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The telephone number is: (202) 382-2285.

Dated: October 9, 1987.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 87-24126 Filed 10-16-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

October 6, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0208
Title: Section 73.1870, Chief operators
Action: Extension
Respondents: Business (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 11,892 Recordkeepers; 311,166 Hours
Needs and Uses: Section 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. It also requires that this designation must be in writing and posted at the transmitter site. The chief operator reviews the station records at least once a week to determine if required entries are being made correctly and verifies that the station has been operated in accordance with FCC rules and regulations. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files. The review of the station records is used by the chief operator, and FCC staff in investigations, to assure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

OMB Number: 3060-0188
Title: Section 73.3550, Requests for new or modified call sign assignments
Action: Extension
Respondents: Businesses and small businesses (including non-profit institutions)
Frequency of Response: On occasion

Estimated Annual Burden: 1,090 Responses; 727 Hours
Needs and Uses: Section 73.3550 requires that a licensee, permittee, assignee or transferee file a letter with the Commission when requesting a new or modified call sign. The data is used by FCC staff to ensure that the call sign requested is not already in use by another station and that the proper "K" or "W" designation is used in accordance with the station location (east or west of the Mississippi River).

OMB Number: 3060–0183
Title: Section 73.1840, Retention of logs
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 11,892 Recordkeepers; 309,192 Hours
Needs and Uses: Section 73.1840 requires that any log required to be kept by station licensees shall be retained for a period of two years, unless otherwise instructed by the FCC (communications involved in an investigation by the FCC). The data kept in the logs are used by FCC staff in investigations to ensure that the station is operating in accordance with the terms and conditions specified in the station license and with FCC rules and regulations.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–24098 Filed 10–16–87; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0263
Title: Section 90.177, Protection of certain radio receiving locations
Action: Extension
Respondents: Individuals or households, state or local governments, businesses (including small businesses) and non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 300 Responses; 150 Hours
Needs and Uses: Section 90.177 requires that applicants proposing to locate near certain radio receiving sites to notify those parties. This requirement is needed to preserve the interference-free reception conditions necessary at these sensitive sites and to protect critcal national security. The information is used by the appropriate Government agency to determine if the proposed transmitter would cause harmful interference to their respective radio receiving sites.

OMB Number: 3060–0258
Title: Section 90.176, Interservice sharing of frequencies in the 150–174 and 450–470 MHz bands
Action: Extension
Respondents: Individuals or households, state or local governments, businesses (including small businesses) and non-profit institutions
Frequency of Responses: On occasion
Estimated Annual Burden: 1,050 Responses; 2,100 Hours
Needs and Uses: Section 90.176 requires applicants proposing operation on frequencies normally assigned to a different class of applicant to provide information to evaluate the interference potential of the proposed operation to primary users of the requested frequency. Private radio frequencies are arranged in a block allocation format with each block serving a particular type of user. Frequencies allocated to one service, however, may be sparsely used in a specific geographic area, and can be used to meet a demand for frequencies by other radio services in that same area. The information is used by the Commission licensing personnel to make the public interest determination described above.

OMB Number: 3060–0219
Title: Section 90.49(b), Communications standby facilities "Special Eligibility Showing"
Action: Extension
Respondents: Businesses
Frequency of Response: On occasion
Estimated Annual Burden: 200 Responses; 150 Hours
Needs and Uses: Section 90.49(b) requires that communications common carriers normally providing safety-related communication landline circuits may request licensing on private radio service frequencies to be used as standby facilities for carrying these safety-related communications when normal (i.e., common carrier) circuits are inoperative due to circumstances beyond the control of the carrier. Applicants are required to submit information that is used to ensure that the requested facilities are necessary for the protection of life or public property.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–24099 Filed 10–16–87; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

October 9, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0311
Title: Section 76.54, Significantly viewed signals; method to be followed for special showings
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 60 Responses; 120 Hours
Needs and Uses: Section 76.54 requires that notification be made to television broadcasting stations, system community units, franchisees and franchise applicants in survey area whenever an audience survey is conducted for significantly viewed signal purposes. This notification shall be made at least 30 days prior to the initial survey period and shall include the name of the survey organization and a description of the procedures to be used. This notification allows

interested parties an opportunity to file objections.

OMB Number: 3060–0225
Title: Section 90.131(b), Amendment or dismissal of applications
Action: Extension
Respondents: Individuals or households, state or local governments, businesses (including small businesses) and non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 25 Responses; 4 Hours
Needs and Uses: Section 90.131(b) provides that any application may, upon written request signed by the applicant or his attorney, be dismissed without prejudice as a matter of right prior to the time the application is granted or designated for hearing. The information will alert the Commission licensing personnel of the applicant's desire to discontinue processing of an application.

OMB Number: 3060–0314
Title: Section 76.209, Fairness doctrine; personal attacks, political editorials
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 1,204 Responses; 3,130 Hours
Needs and Uses: During the presentation of views on a controversial issue of public importance, an attack may be made upon the honesty, character, integrity, or like personal qualities of an identified person or group. Section 76.209 requires that cable television system operators notify, in detail, the person or group on which the personal attack was made or the opponent of candidate endorsed by cable system in an editorial. This notification gives the person or group the right to respond over the licensee's facilities.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–24160 Filed 10–16–87; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

October 7, 1987.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 634–1535. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0203
Title: Section 97.90, System network diagram required
Action: Extension
Respondents: Individuals or households
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 200 Recordkeepers; 20 Hours
Needs and Uses: The Commission requires an amateur radio station having one or more units in repeater or auxiliary operation to retain a diagram describing the system network. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended.

OMB Number: 3060–0222
Title: Section 97.88, Operation of a station by remote control
Action: Extension
Respondents: Individuals or households
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 500 Recordkeepers; 100 Hours
Needs and Uses: Section 97.88 requires operators of amateur radio stations to post a photocopy of the station license, maintain a list of authorized control operators, and retain a block diagram. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that stations are operating in accordance with the Communications Act of 1934, as amended.

OMB Number: None
Title: Section 21.910, Special Procedures for Discontinuance, Reduction, or Impairment of Service by Common Carrier MDS Licensees
Action: New collection
Respondents: Business (including small businesses)
Frequency of Response: Whenever respondent elects to change status
Estimated Annual Burden: 1,330 Responses; 997 Hours
Needs and Uses: Applicants, permittees, and licensees for radio stations in the Multipoint Distribution Service (MDS) may escape certain regulatory requirements, such as filing tariffs, by electing non-common carrier status, and must inform the Commission of election or else continue to be regulated as common carriers.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–24161 Filed 10–16–87; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 9, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 634–1535. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None
Title: Automated Reporting and Management Information System (ARMIS), Sections 43.21 and 43.22
Action: New collection
Respondents: Businesses (telephone companies)
Frequency of Response: Quarterly and annual
Estimated Annual Burden: 600 Responses; 69,000 Hours
Needs and Uses: The Commission is creating an automated reporting system to collect financial and operating data from all Tier 1 telephone companies and those Class A telephone companies with annual revenues over $100 million. The automated reporting system is necessary to administer the Commission's accounting, jurisdictional separation, access charge, and joint cost rules and to analyze revenue requirements and rates of return.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-24162 Filed 10-16-87; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1987-13]

Filing Dates for Tennessee Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Tennessee Special Elections.

SUMMARY: Committees required to file reports in connection with only the special primary election to be held in the 5th Congressional District of Tennessee on December 3, 1987, must file a 12-day preprimary election report by November 21, 1987. Committees required to file reports in connection with *both* the special primary election *and* the special general election to be held on December 3, 1987, and January 19, 1988, respectively, must file a 12-day pre-primary election report by November 21, 1987, the 12-day pre-general election report by January 7, 1988, and a 30-day post-general election report by February 18, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463. Telephone: (202) 376-3120, Toll free: (800) 424-9530.

Filing Dates for Special Primary and Special General Elections, 5th Congressional District, Tennessee

All principal campaign committees of candidates in the special primary election and all other political committees not filing monthly reports which support candidates in the special primary election shall file a 12-day pre-primary election report due on November 21, 1987, with coverage dates from the closing date of the last report filed through November 13, 1987.

All principal campaign committees of candidates in the special primary election and the special general election and all other political committees not filing monthly reports which support candidates in these elections shall file a 12-day pre-primary election report due on November 21, 1987, with coverage dates from the last report filed through November 13, 1987; a 12-day pre-general election report due on Jaunary 7, 1988, with coverage dates from November 14, 1987 through December 30, 1987; and a 30-day post-election report due on February 18, 1988, with coverage dates from January 1, 1988, to February 8, 1988.

Committees should file a year-end report, due on January 31, 1988. Committees involved with the special general election have the option of filing a consolidated pre-general and year-end report in lieu of two separate reports, provided the consolidated report is filed by January 7, 1988.

Dated: October 13, 1987.
Scott E. Thomas,
Chairman, Federal Election Commission.
[FR Doc. 87-24176 Filed 10-16-87; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Associated Transportation (Australia Ltd.), et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-009735-018.
Title: Steamship Operators Intermodal Committee.
Parties:
Associated Container Transportation (Australia Ltd.)
Barber Blue Sea Line
Companhia de Navegacao Maritima Netumar
Coordinated Caribbean Transport, Inc.
Evergreen Marine Corp., Ltd.
Farrell Lines, Inc.
Flota Mercante Grancolombiana
Hamburg-Suedamerikknische-Dampfschiffahrts-Gesellschaft
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
South African Marine Corp.
United States Lines, Inc.
Venezuelan Line
Yamashita-Shinnihon Steamship Co. Ltd.
Yang Ming Line
Zim Israel Navigation Co. Ltd.
American President Lines, Ltd.
Mitsui O.S.K. Lines, Ltd.
Seapac Services, Inc.
Showa Line, Ltd.
Trans Freight Lines

Synopsis: The proposed amendment would admit Atlantic Container Line (BV) as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 218-011152.
Title: Mitsui O.S.K. Lines/EAC PNSL Service Transshipment Agreement.
Parties:
Mitsui O.S.K. Lines, Ltd. (Mitsui)
EAC PNSL Service, Ltd. (EAC PNSL)

Synopsis: The proposed agreement would permit Mitsui to transship empty or loaded containers aboard EAC PNSL vessels in the trade between ports and points in the United States and Canada, and Singapore, Malaysia, Hong Kong and Taiwan with transshipment at Hong Kong or Kaohsiung, Taiwan or other ports in the above Far East countries. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Dated: October 4, 1987.
Joseph C. Polking,
Secretary.
[FR Doc. 87-24164 Filed 10-16-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Abington Bancorp, Inc., et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on

an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 6, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Abington Bancorp, Inc.*, Abington, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Abington Savings Bank, Abington, Massachusetts, which engages in Massachusetts Savings Bank Life Insurance Activities. Comments on this application must be received by November 3, 1987.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Affiliated Bank Corporation of Wyoming*, Casper, Wyoming; to acquire 100 percent of the voting shares of The First National Bank of Lovell, Lovell, Wyoming.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Wheeler Bancshares, Inc.*, Wheeler, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Wheeler, Wheeler, Texas.

Board of Governors of the Federal Reserve System, October 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24063 Filed 10-16-87; 8:45 am]

BILLING CODE 6210-01-M

Independent Southern Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.26 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Independent Southern Bancshares, Inc.*, Brownsville, Tennessee; to engage de novo in making and servicing loans or other extensions of credit for the account of other banks pursuant to § 225.25(b)(1); and providing management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24064 Filed 10-16-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 3, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dennis Casey Reilly, Missoula, Montana; Jacqueline Rahn Reilly, Missoula, Montana; Robert I. Noble, M.D., Profit Sharing Trust and Pension Plan, Robert I. Noble, Trustee, Butte, Montana; Charles Komberec, Missoula Montana; Richard C. Keep, Charlo, Montana; and Russell A. Anderson, Butte, Montana; acting as a group in concert, to acquire 51 percent of the voting shares of First Citizen Bank of Butte, Butte, Montana.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lucia Terwilliger*, Colorado Springs, Colorado, to acquire 25.3 percent of the voting shares of TCB Investments, Inc., Kansas City, Missouri, and thereby indirectly acquire Citizens Bank of Appleton City, Appleton City, Missouri; Tri-County State Bank of El Dorado Springs, El Dorado Springs, Missouri; Lowry City Bank, Lowry City, Missouri; and Osceola Bank, Osceola, Missouri.

Board of Governors of the Federal Reserve System, October 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24065 Filed 10-16-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Open Season Notice; Thrift Savings Plan Elections

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) in its regulation at 5 CFR 1600.2 provides that advance notice will be given of the beginning and ending dates of all open seasons (as defined at 5 CFR 1600.1) which are subsequent to the open season ending on July 31, 1987. The Board's next open season will

commence on November 15, 1987 and end on January 31, 1988. The election period (as defined at 5 CFR 1600.1) covered by this open season extends from January 1 to January 31, 1988.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 653–2573.

Dated: October 15, 1987.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 87–24201 Filed 10–16–87; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: November 5–6, 1987.

Place: Conference Room, Office of the Inspector General, Corridor 5500, HHH North Building, 330 Independence Avenue, SW., Washington, DC 20201.

Time and Type of Meeting: Open 9 a.m. to 5 p.m.—November 5; Open 9 a.m. to 12 noon—November 6.

Contact Person: Robert E. Glenn, Executive Secretary, MHRAC, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291–4474, FTS: 923–4474.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of previous meeting and future meeting dates; and discussion of epidemiological studies of coal miners.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: October 9, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–24066 Filed 10–16–87; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 87M–0305]

IOLAB Corp.; Premarket Approval of LASAG Microruptor 2 and Topaz Nd:YAG Ophthalmic Lasers for Iridotomy

AGENCY: Food and Drug Adminstration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by IOLAB Corp. for premarket approval, under the Medical Device Amendments of 1976, of the LASAG Microruptor 2 and Topaz Nd:YAG Ophthalmic Lasers for performing an iridotomy (hole in the iris). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by November 18, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On April 1, 1987, IOLAB Corp., Claremont, CA 91711, submitted to CDRH a supplemental application for premarket approval of the LASAG Microruptor 2 and Topaz Nd:YAG Ophthalmic Lasers. The LASAG Microruptor 2 and Topaz Nd:YAG Ophthalmic Lasers are a neodymium:yttrium-aluminum-garnet (Nd:YAG) ophthalmic laser that is indicated for performing an iridotomy (hole in the iris).

On July 23, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 27, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Devices Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantive issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or, before November 18, 1987, file with the

Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this docment. Received petitions may be seen in the office above between 9 a.m., and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e)(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 6, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–24070 Filed 10–16–87; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Los Angeles District Office, chaired by George J. Gerstenberg, District Director. The topics to be discussed are health claims on food labels and prescriptions.

Date: Wednesday, October 21, 1987, 9:30 a.m. to 12 m.

Address: Los Angeles District Office, 1521 West Pico Blvd., Los Angeles, CA 90015.

For Further Information Contact: Gordon L. Scott, Consumer Affairs Officer, Food and Drug Administration, 1521 West Pico Blvd., Los Angeles, CA 90015, 213–252–7597.

Nashville District Office, chaired by Hayward E. Mayfield, District Director. The topic to be discussed is health claims on food labels.

Date: Monday, October 26, 1987, 9:30 a.m. to 12 m.

Address: Legislative Plaza, Rm. 16, 16th and Union Sts., Nashville, TN 37219.

For Further Information Contact: Sandra S. Baxter, Consumer Affairs Officer, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–736–2088.

San Francisco District Office, chaired by Ronald M. Johnson, District Director. The topics to be discussed are health claims on food labels and FDA's current issues.

Date: Monday, October 26, 1987, 10:00 a.m. to 12 m.

Address: Federal Building, First Street, Room 160, San Jose, CA 95113.

For Further Information Contact: Lula M. Holland, Consumer Affairs Officer, Food and Drug Administration, 50 United Nations Plaza, Room 526, San Francisco, CA 94102, 415–556–1457.

St. Louis Branch Office, chaired by Raymond Hedblad, Branch Director. The topic to be discussed is health claims on food labels.

Date: Thursday, October 29, 1987, 4 p.m.

Address: St. Louis University Medical Center, Rooms 103–104, Learning Resources Center, 3544 Caroline St., St. Louis, MO 63104.

For Further Information Contact: Mary-Margaret Richardson, Consumer Affairs Officer, Food and Drug Administration, 808 Collins Alley, St. Louis, MO 63102, 314–425–5021.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 9, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–24071 Filed 10–16–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[PRT# 715460]

Issuance of Permit for Marine Mammals; Adventure world

On July 10, 1987, a notice was published in the **Federal Register** (52, FR 26092) that an application had been filed with the Fish and Wildlife Service by Adventure World (PRT# 715460) for authorization to take (capture) one male and one female Alaskan sea otters (*Enhydra lutris lutris*) and export them to Adventure World, Perfecture, Japan, for public display.

Notice is hereby given that on August 20, 1987, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service granted the requested authorization subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Note.—Due to an oversight, this notice was not published within 10 days of issuance of the permit as required by 50 CFR 18.33 (c).

Dated: October 14, 1987.

Larry La Rochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–24175 Filed 10–16–87; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[WY–930–07–5101–09–YKAK]

Wyoming; Proposed Projects by Amoco Production Co.; Meetings and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to conduct public scoping meetings and to prepare an Environmental Impact Statement.

SUMMARY: This notice describes the action to be analyzed in the EIS, the geographic area that would be affected, the preliminary list of issues and concerns, the scoping process to be used, the locations of offices that will have information for public review both during and at the completion of the process, and the person to contact for more information.

The environmental impact statement (EIS) will analyze impacts from development of the Raptor Field and construction and operation of the proposed Fontenelle Gas Processing Plant located in southwestern Wyoming, which would be capable of producing 200 million standard cubic feet per day of CO_2, and the construction and operation of a 175-mile-long, 18-inch diameter CO_2 pipeline from the vicinity of Powder River, Wyoming, to the Elk Basin oil field on the Wyoming/Montana border near Powell, Wyoming. In addition, the EIS will also analyze the impacts from field facilities and injection/recovery plants and ancillary facilities for enhanced oil recovery in the Salt Creek field, which would be supplied with CO_2 from a 10-mile-long, 16-inch spur pipeline near Midwest, Wyoming; from similar plants and facilities in the Little Buffalo Basin field which would be supplied by a 32-mile-long, 16-inch spur pipeline located south

of Meeteetse, Wyoming; and from similar plants and facilities located in the Beaver Creek field, south of Riverton, Wyoming, which would be supplied by a 50-mile-long, 18-inch trunkline which would be a spur line off of the Bairoil Pipeline. The proposed projects are in Big Horn, Fremont, Hot Springs, Lincoln, Natrona, Park, Sweetwater, and Washakie Counties, Wyoming. Part of the Elk Basin field also is in Carbon County, Montana.

DATES: Public scoping meetings will be held at the following times and locations:

December 1, 1987, 7 p.m., Northwest Community College, Faberberg Lecture Hall, Room 65, Engineering and Technology Building, Powell, Wyoming

December 2, 1987, 7 p.m., Bureau of Land Management, Worland District Office, 101 South 23rd Street, Worland, Wyoming

December 3, 1987, 7 p.m., Amoco Field Office, Conference Room, Through Town and ½ Mile Southwest, Midwest, Wyoming

December 8, 1987, 7 p.m., Fremont County School District Administrative Building, 121 North 5th West, Riverton, Wyoming

December 9, 1987, 7 p.m., Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming

FOR FURTHER INFORMATION CONTACT: Comments and suggestions should be sent to the following office before December 30, 1987: Bureau of Land Management, Attn: Mr. Glen Nebeker, Casper District Office, 1701 East E. Street, Casper, Wyoming 82601.

ADDRESSES: Copies of the scoping summary will be available to the public on or about January 19, 1988, for review on request at the addresses listed below.

Bureau of Land Management, Casper District Office, 1701 East E. Street, Casper Wyoming 82601, Phone: (307) 261–5101

Bureau of Land Management, Worland District Office, P.O. Box 119, 101 South 23rd Street, Worland, Wyoming 82401, Phone: (307) 347–9871

Bureau of Land Management, Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming 82902–1869, Phone: (307) 382–5350

Bureau of Land Management, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, Phone: (307) 772–2425

Bureau of Land Management, Rawlins District Office, P.O. Box 670, 1300 North 3rd Street, Rawlins, Wyoming 82301, Phone: (307) 324–7171

Bureau of Land Management, Miles City District Office, P.O. Box 940, Miles City, Montana 59301, Phone: (406) 232–4331

SUPPLEMENTARY INFORMATION: The action to be analyzed in the EIS consists of the construction, operation, and maintenance of projects proposed by Amoco Production Company. The no action alternative will also be analyzed.

Planning Information Company of Denver, Colorado, has been selected to prepare the EIS for BLM on the proposal. The BLM Wyoming State Director has assigned the project lead to BLM's Casper District Manager. Federal agencies will be queried as to their interest in becoming cooperators.

The CO_2 would either be purchased from Exxon's Shute Creek Gas Processing Plant in southwestern Wyoming, or produced at Amoco's proposed Fontenelle Gas Plant, and carried via the existing Exxon Bairoil CO_2 pipeline to near Powder River, Wyoming, where a new 18-inch pipeline will transport it north. The CO_2 would be initially injected into oil-bearing formations in the Elk Basin field for enhanced oil recovery (EOR). Plans are to stagger delivery of the CO_2 to the other identified fields and possibly to other markets in the Powder River Basin for enhanced oil recovery through the year 2000.

The scope of the document includes construction and operation of the proposed Fontenelle Gas Processing Plant near Opal, Wyoming; development of the Raptor Field Unit for CO_2 production; the main 175-mile-long pipeline to Elk Basin; spur lines to the Little Buffalo Basin, Beaver Creek, and Salt Creek fields; four enhanced oil recovery plants with ancillary facilities, including distribution lines, block valves, meter stations, scraper traps, etc. and maintenance and future abandonment of the proposed facilities. A satellite communications system is proposed to be used.

Geographic Area

The geographic area to be analyzed for impacts is central and northern Wyoming, and extreme south central Montana. The proposed CO_2 pipeline would extend 175 miles, from 20 miles northwest of Bairoil, Wyoming, near Powder River, Wyoming, to Elk Basin, which is the initial site for EOR. A small portion of the affected Elk Basin field is in Montana. It is currently administered by the BLM's Worland Office. Alternate routes have not been developed, but are expected to be in the same general vicinity. Regional and cumulative impacts may extend somewhat beyond these geographic areas, but because the proposal are planned to be staggered over a large geographic area over an 8-year period, they are not expected to be cumulatively significant.

Issues and Concerns

The following issues and concerns have been identified to date:

—Air quality effects for the proposed gas treatment plant and the proposed CO_2 processing plant.

—Potential impacts of crossing coal, other mineral leases, and agricultural lands.

—Impacts on historical trail crossings and cultural resources.

—Potential impacts to wildlife and habitat, recreation, visual resources, and land uses.

—Public safety and health.

The public is encouraged to present their ideas and views on these and other issues and concerns. Responses and comments on the proposal will be accepted through December 30, 1987. All issues and concerns will be considered in preparing the EIS.

Hillary A. Oden,

State Director, Wyoming.

October 9, 1987.

[FR Doc. 87–24067 Filed 10–16–87; 8:45 am]

BILLING CODE 4310–22–M

[CO–010–08–4322–02]

Craig, CO, Advisory Council Meeting

Time and Date: November 17, 1987 at 10:00 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters To Be Considered:

1. Foreign Investments on Public Lands
2. Land Status
3. Herbicides and Pesticides
4. Wild Horses and Burros
5. BLM's Role in Developing Sections of the Yampa River for Recreation

Contact Person For More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: October 8, 1987.

Alan Schroeder,

Acting Associate District Manager.

[FR Doc. 87–24173 Filed 10–16–87; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from November 1, 1987, through April 30, 1988. The List of Restricted Joint Bidders published in the **Federal Register** on March 30, 1987, at 52 FR 10174 covered the bidding period of May 1, 1987, through October 31, 1987.

Group I.
Chevron U.S.A. Inc.; Chevron Corporation.
Group II.
Exxon Corporation.
Group III.
Texaco Inc.; Getty Oil Company; Texaco Producing Inc.
Group IV.
Shell Offshore Inc.; Shell Oil Company; Shell Western E&P Inc.
Group V.
Mobile Oil Corporation; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Dated: October 13, 1987.

David W. Crow,

Deputy Director, Minerals Management Service.

[FR Doc. 87-24101 Filed 10-16-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-376 (Final)]

Import Investigations; Certain Stainless Steel Butt-Weld Pipe Fittings From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-376 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of stainless steel butt-weld pipe fittings, provided for in item 610.89 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before November 24, 1987, and the Commission will make its final injury determination by January 13, 1988 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-523-0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by calling the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of stainless steel butt-weld pipe fittings from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on April 2, 1987, by Flowline Corp., New Castle, PA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 19936, May 28, 1987).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on November 20, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 3, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 23, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 25, 1987, in Room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 30, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This

rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 10, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 10, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 13, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-24062 Filed 10-16-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-17934 (Sub-No. 1)]

Norfolk Southern Corp. and North American Van Lines, Inc.; Control; Tran-Star, Inc.

AGENCY: Interstate Commerce Commission

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application filed September 16, 1987, for Norfolk Southern Corporation and North American Van Lines, Inc., to acquire control of Tran-Star, Inc.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than November 19, 1987.

ADDRESSES: Unless otherwise indicated, an original and 10 copies of all documents, referring to No. MC-F-17934 (Sub-No. 1), should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding should be sent to: (1) Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

(2) Applicants' representatives:

Robert J. Cooney, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

Greg E. Summy, North American Van Lines, Inc., P.O. Box 988, Fort Wayne, IN 46801.

FOR FURTHER INFORMATION CONTACT:

Andrew L. Lyon, (202) 275-7191.

TDD for hearing impaired, (202) 275-1721.

Kenneth H. Schwartz, (202) 275-7956.

SUPPLEMENTARY INFORMATION: The proposal has been determined to be a minor transaction. The application and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC.

Any interested person may participate in this proceeding by submitting written comments regarding the application. Comments must be filed no later than November 19, 1987. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Written comments shall be concurrently served by first-class mail on the United States Secretary of Transportation and the Attorney General of the United States. Written comments must also be served upon all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by December 3, 1987. All persons who file timely written comments shall be considered parties of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed. Comments must contain the information specified at 49 CFR 1180.4(d)(1)(iii) for minor transactions. Because the proposed transaction is a minor transaction, no responsive applications shall be permitted. 49 CFR 1180.4(d)(4).

Preliminary comments from the Secretary of Transportation and Attorney General must be filed by December 3, 1987.

Additional information is contained in the Commission's decision. To obtain a copy of the decision, write to the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275-7428. Telephone number of hearing impaired: (202) 275-1721.

Decided: October 9, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-24127 Filed 10-16-87; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Hearing

AGENCY: National Commission To Prevent Infant Mortality.

ACTION: Notice of hearing.

SUMMARY: In accordance with Public Law 99–660, notice is given of a hearing on perinatal AIDS. The purpose of the hearing is to discuss the perinatal AIDS problem in the United States.

DATE: Monday, October 26, 1987, 9:00–12:00 noon.

ADDRESS: Jackson Memorial Hospital, Mailman Center Auditorium, 1601 NW 12th Avenue, Miami, Florida.

FOR FURTHER INFORMATION CONTACT: Anne Hockett, 202–472–1364.

Senator Lawton Chiles,

Chairman.

[FR Doc. 87–24284 Filed 10–16–87; 11:21 am]

BILLING CODE 6820-SK-M

NATIONAL CREDIT UNION ADMINISTRATION

[Interpretive Ruling and Policy Statement No. 87–1]

Guidelines For Complaince With Federal Bank Bribery Law

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interpretive Ruling and Policy Statement Number 87–1.

SUMMARY: The Bank Bribery Amendments Act of 1985 requires that Federal agencies with responsibility for regulating financial institutions establish guidelines to assist financial institution officials in complying with this law. The guidelines were developed by the Interagency Bank Fraud Working Group. The guidelines adopted by the National Credit Union Administration Board (the "Board") encourage federally-insured credit unions to adopt codes of conduct that describe the prohibitions of the bank bribery law. The guidelines also identify situations that, in the opinion of the Board, do not constitute violations of the bribery law. These guidelines do not impose new requirements on federally-insured credit unions. They are designed to help credit unions comply with the bank bribery law.

EFFECTIVE DATE: October 16, 1987.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. Telephone number (202) 357–1030.

SUPPLEMENTARY INFORMATION: The Board issued a proposed Interpretive Ruling and Policy Statement (IRPS) containing guidelines for compliance with the Bank Bribery Law on June 10, 1987, and solicited comments during a thirty-day period.

Only ten comment letters were received concerning the proposed IRPS. Nine were favorable, one opposed to the issuance of guidance on this subject. Of the nine favorable letters, four did not recommend any change to the proposal.

One letter asked whether Credit and Supervisory Committee members are intended to be included within the scope of the guidelines. Yes, NCUA interprets the Bank Bribery Amendments Act as applying to committee members and the guidelines should include all officers and committee members of the credit union. The IRPS has been modified to clarify its scope. Also, it should be noted that these guidelines are intended to assist credit union officials, not credit union service organization officials. Of course, NCUA Rules and Regulations do set forth certain requirements concerning a credit union's investment in a CUSO. The proposed guidelines relate only to the Federal Bank Bribery Law; however, credit unions are encouraged to consider other possible conflicts of interest in developing internal codes of conduct.

Another letter recommended that the term "member" rather than "customer" be utilized where appropriate. This change has been made. One proposed that the appropriateness of accepting promotional materials be left to the discretion of the individual employee. The employee would make an individual determination regarding whether something was of nominal value and therefore acceptable. NCUA disagrees and believes that the need for consistency within the institution and the possibility of abuse make it preferable that the code of conduct provide what is nominal or acceptable. Another writer urged absolute prohibition on acceptance of holiday gifts. While a credit union may choose to prohibit receipt of such gifts in its code of conduct, NCUA continues to believe that receipt of a holiday season gift from a member, under appropriate circumstances, would not violate the bank bribery statute.

One writer inquired about treatment of raffle prizes paid for by a particular vendor. Because each sweepstakes scenario is somewhat different, NCUA does not believe it would be effective to include an example in the IRPS. Generally, if the prize is available to all equally through some random selection process, there would not, in NCUA's view, be any danger of violating the bank bribery statute. Of course, credit unions may elect to restrict or require reporting of this type of activity in any code they adopt. Another writer expressed concern that NCUA is attempting to mandate adoption of a code of conduct. These guidelines are not regulatory and encourage, rather than require, credit unions to act.

A letter expressed a concern that the guidelines, in prohibiting officials from accepting anything of value in connection with credit union business, either before or after a transaction is discussed, were in conflict with previous NCUA opinions and the FCU Standard Bylaws. The commenter was specifically concerned with a 1986 NCUA opinion that stated an official who owns a loan collection agency may accept business from the credit union he serves.

provided he is not involved in discussions involving his pecuniary interest. That situation would not conflict with the guidelines, which refer to discussion or consummation of a transaction by the official. However, it would now violate § 701.21(c)(8), prohibited fees, which was amended in April, 1987.

Finally, one writer objected to the issuance of guidelines as unnecessary and not required by law. In NCUA's view, these guidelines are appropriate and necessary to assist credit unions in complying with the bank bribery statute. The writer suggested that any exceptions set forth in the guidelines should not emphasize value, because the statute proscribes corrupt conduct. NCUA recognizes that the issue of whether conduct is corrupt, within the meaning of the bank bribery statute, does not necessarily depend on the value of something offered or received. Nevertheless, certain of the exceptions set forth properly recognize that the risk of corruption or breach of trust is not present in circumstances involving receipt of an item of reasonable value.

We have inserted language stating that any code should be consistent with the intent of the bank bribery statute to proscribe corrupt activity within financial institutions. We have also suggested that management review disclosures to detemine that they are reasonable and do not threaten the integrity of the credit union.

Interpretive Ruling and Policy Statement No. 87–1

Guidelines for Compliance With Federal Bank Bribery Law

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473, Title I, October 12, 1984) amended the Federal bank bribery law, 18 U.S.C. 215, to prohibit employees, officers, directors, agents, and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institution. The amended law also prohibited anyone from offering or giving anything of value to employees, officers, directors, agents, or attorneys of financial institutions in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued a Policy Concerning Prosecution Under the New Bank Bribery Statute. In that Policy, the Department of Justice discussed the basic elements of the prohibited conduct under section 215, and indicated that cases to be considered for prosecution under the new bribery law entail breaches of fiduciary duty or dishonest efforts to undermine financial institution transactions. Because the statute was intended to reach acts of corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift-giving or entertaining that did not involve a breach of fiduciary duty or dishonesty.

Congress decided that the broad scope of the statute provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (Pub. L. 99–370, August 4, 1986) to narrow the scope of 18 U.S.C. Section 215 by adding a new element, namely, an intent to corruptly influence or reward an officer in connection with financial institution business. As amended, section 215 provides in pertinent part:

Whoever—

(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be [guilty of an offense].

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.[1] This exception is set forth in subsection 215(c).

The penalty for a violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds $100, the offense is a felony punishable by up to five years imprisonment and a fine of $5,000 or three times the value of the bribe or gratuity. If value does not exceed $100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of $1,000.

In addition, the law now requires the financial institution regulatory agencies to publish guidelines to assist employees, officers, directors, agents, and attorneys of financial institutions to comply with the law. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to but not dispositive of any prosecutive decision the Department of Justice may make in any particular case. 132 Cong. Rec. 5944 (daily ed. Feb. 4, 1986). Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standards set forth in the statute. Nonetheless, in adopting its own prosecution policy under the bank bribery statute, the Department of Justice can be expected to take into account the financial institution regulatory agency's expertise and judgment in defining those activities or practices that the agency believes do not undermine the duty of an employee, officer, director, agent, or attorney to the financial institution. *United States Attorneys' Manual* Section 9–40.439.

Proposed Guidelines

The proposed guidelines encourage all federally-insured credit unions to adopt internal codes of conduct or written policies or amend their present codes of conduct or policies to include provisions that explain the general prohibitions of the bank bribery law. The proposed guidelines relate only to the bribery law and do not address other areas of conduct that a federally-insured credit union would find advisable to cover in its code of ethics. However, in developing its code of conduct, a federally-insured credit union should be mindful not only of the provisions of the Bank Bribery Act discussed herein, but also of other provisions of state or Federal law concerning conflicts of interest or ethical considerations. Moreover, regardless of whether a conflict of interest constitutes a criminal violation of the bank bribery statute, it could violate NCUA's Rules and Regulations. Those regulations contain various provisions which prohibit officials, employees and their family members from receiving personal gain in connection with business transactions of the credit union. See, for example, § 703.4(e), 12 CFR 703.4(e), concerning investments; § 701.21(c)(8), 12 CFR 701.21(c)(8), concerning loans; § 701.21(d)(5), 12 CFR 701.21(d)(5), concerning preferential lending; § 721.2(c), 12 CFR 721.2(c), concerning group purchasing activities; and § 701.27(d)(6), 12 CFR 701.27(d)(6), concerning CUSO's.

In connection with the Bank Bribery Amendments Act, consistent with the intent of the statute to proscribe corrupt activity within financial institutions, the code should prohibit any employee, officer, director, committee member, agent, or attorney (hereinafter "Credit

[1] Thus, if such payments were made to a credit union official by a sponsoring organization in the usual course of business, they would be excepted from coverage under the law.

Union Official") of a federally-insured credit union (hereinafter "credit union") from (1) soliciting for themselves or for a third party (other than the credit union itself) anything of value from anyone in return for any business, service or confidential information of the credit union, and from (2) accepting anything of value (other than bona fide salary and fees referred to in 18 U.S.C. 215(c)) from anyone in connection with the business of the credit union either before or after a transaction is discussed or consummated.

The credit union's codes or policies should be designed to alert Credit Union Officials about the bank bribery statute, as well as to establish and enforce written policies on acceptable business practices.

In its code of conduct, the credit union may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with credit union business. There are a number of instances where a Credit Union Official, without risk of corruption or breach of trust, may accept something of value from one doing or seeking to do business with the credit union. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the Credit Union Official; or if the benefit would be paid for by the credit union as a reasonable business expense if not paid for by another party. By adopting a code of conduct with appropriate allowances for such circumstances, a credit union recognizes that acceptance of certain benefits by its Credit Union Officials does not amount to a corrupting influence on the credit union's transactions.

In issuing guidance under the statute in the areas of business purpose entertainment or gifts, it is not advisable for the Board to establish rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. A credit union should seek to embody the highest ethical standards in its code of conduct. In doing this, a credit union may establish in its own code of conduct a range of dollar values which cover the various benefits that its Credit Union Officials may receive from those doing or seeking to do business with the credit union.

The code of conduct should provide that, if a Credit Union Official is offered or receives something of value beyond what is authorized in the credit union's code of conduct or written policy, the Credit Union Official must disclose that fact to an appropriately designated official of the credit union. The credit union should keep written reports of such disclosures. An effective reporting and review mechanism should prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the credit union to better protect itself from self-dealing. However, a Credit Union Official's full disclosure evidences good faith when such disclosure is made in the context of properly exercised supervision and control. Management should review the disclosures and determine that what is accepted is reasonable and does not pose a threat to the integrity of the credit union. Thus, the prohibitions of the bank bribery statute cannot be avoided by simply reporting to management the acceptance of various gifts.

The Board recognizes that a serious threat to the integrity of a credit union occurs when its Credit Union Officials become involved in outside business interests or employment that give rise to a conflict of interest. Such officials of interest may evolve into corrupt transactions that are covered under the bank bribery statute. Accordingly, credit unions are encouraged to prohibit, in their codes of conduct or policies, their Credit Union Officials from self-dealing or otherwise trading on their positions with credit unions or accepting from one doing or seeking to do business with the credit union a business opportunity not available to other persons or made available because of such officials' positions with the credit union. In this regard, a credit union's code of conduct or polilcy should require that its Credit Union Officials disclose all potential conflicts of interest, including those in which they have bene inadvertently placed due to either business or personal relationships with members, suppliers, business associates, or competitors of the credit union.

Exceptions

In its code of conduct or written policy, a credit union may describe appropriate exceptions to the general prohibition regarding the acceptance of things of value in connection with credit union business. These exceptions may include those that:

(a) Permit the acceptance of gifts, gratuities, amenities, or favors based on obvious family or personal relationships (such as those between the parents, children or spouse of a Credit Union Official) where the circumstances make it clear that it is those relationships rather than the business of the credit union concerned which are the motivating factor;

(b) Permit acceptance of meals, refreshments or entertainment, all of reasonable value and in the course of a meeting or other occasion the purpose of which is to hold bona fide business discussions, provided these expenses would be paid for by the credit union if not paid for by the other party as a reasonable business expense (the credit union may establish a specific dollar limit for such an occasion);

(c) Permit acceptance of loans from banks or financial institutions on customary terms to finance proper and usual activities of Credit Union Officials, such as home mortgage loans, except where prohibited by law;

(d) Permit acceptance of advertising or promotional material of reasonable value, such as pens, pencils, note pads, key chains, calendars, and similar items;

(e) Permit acceptance of discounts or rebates on merchandise or services that do not exceed those available to other members;

(f) Permit acceptance of gifts of reasonable value that are related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, Christmas, or bar or bat mitzvah (the credit union may establish a specific dollar limit for such an occasion); or

(g) Permit the acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the credit union may establish a specific dollar limit for such an occasion).

The policy or code may also provide that, on a case-by-case basis, a credit union may approve of other circumstances, not identified above, in which a Credit Union Official accepts something of value in connection with credit union business, provided that such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

Disclosures and Reports

To make effective use of these guidelines, the Board recommends the following additional procedures:

(a) The credit union should maintain a copy of any code of conduct or written policy it establishes for its Credit Union Officials, inlcuding any modifications thereof.

(b) The credit union should require an initial written acknowledgment from its Credit Union Officials of its code or policy and written acknowledgement of any subsequent material changes and

the officials' agreement to comply therewith.

(c) The credit union should maintain written reports of any disclosures made by its Credit Union Officials in connection with a code of conduct or written policy.

By the National Credit Union Administration Board on the 8th day of October 1987.

Becky Baker,

Secretary of the Board.

[FR Doc. 87-24128 Filed 10-16-87; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published September 21, 1987 (52 FR 35503). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the November 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m. Eastern Time.

ACRS Subcommittee Meetings

Joint Scram Systems Reliability and Core Performance, October 28, 1987 has been postponed to January 29, 1988.

Instrumentation and Control Systems, October 29, 1987, Washington, DC. The Subcommittee will discuss the NRC's proposed final resolution of USI A-47, "Safety Implications of Control Systems." In addition, the Subcommittee will discuss and consider the comments by Mr. Basdekas regarding the resolution of this USI.

Maintenance Practices and Procedures, October 30, 1987, Washington, DC. The Subcommittee will be briefed and will discuss the proposed Policy Statement on Maintenance of Nuclear Power Plants.

Systematic Assessment of Operating Experience, November 3, 1987, Washington, DC. The Subcommittee will discuss AEOD's role in helping the NRC learn from operating experience.

TVA Organizational Issues, November 4, 1987, Washington, DC. The Subcommittee will review the safety issues associated with TVA management reorganization and the Sequoyah restart.

Generic Items, November 17, 1987, Washington, DC. The Subcommittee will discuss with selected licensees the contribution to plant safety resulting from the implementation of resolved generic issues and USIs.

Decay Heat Removal Systems, November 17, 1987, Washington, DC. The Subcommittee will discuss: (1) The decision by Toledo Edison not to install a dedicated blowdown system at Davis Besse; (2) the status of NRC's action on potentially unanalyzed LB LOCA scenario; (3) implications of secondary side water level control in B&W OTSGs vis-a-vis operator actions in accident situations; and (4) implications of the Diablo Canyon loss of shutdown cooling event vis-a-vis lack of steam generator water box vents.

Thermal-Hydraulic Phenomena, November 18 and 19, 1987, Washington, DC. The Subcommittee will review key elements of NRC RES's 5-Year Thermal-Hydraulic Research Program for input to an ACRS Report on thermal-hydraulic research to Congress and the Commission.

Quality and Quality Assurance in Design and Construction, November 24, 1987, Washington, DC. The Subcommittee will review QA Experience in Readiness Reviews as applied to nuclear power plants, with a view toward possible application to HLW geologic repositories and monitored retrievable storage (MRS) facilities.

Babcock & Wilcox Reactor Plants, January 5, 1988, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter of V. Stello, EDO.

Joint Scram Systems Reliability and Core Performance, January 29, 1988, Washington, DC. The Subcommittees will review the current status of LWR plant operations (core reload designs, etc.) as they impact on core reactivity control operational limits (e.g., moderator temperature coefficients in general, and ATWS analyses in particular).

Reliability Assurance, February 9, 1988, Washington, DC. The Subcommittee will be briefed on the current status of equipment qualification research. The Subcommittee will also discuss lightning protection at nuclear power plants.

Advanced Reactor Designs, Date to be determined (November), Washington, DC. The Subcommittee will review and comment on the draft Commission paper that will be prepared by the NRC Staff regarding the severe accidents and containment issues for the DOE-sponsored advanced reactor designs.

Containment Requirements, Date to be determined (November/December), Washington, DC. The Subcommittee will review the proposed Containment Performance/Improvement Program Plan. The Plan is in three Parts: (1) Improved plant operations including EOPs, (2) severe accident vulnerabilities via Individual Plant Examinations, and (3) containment performance in the event of a severe accident.

Metal Components, Date to be determined (November/December), Charlotte, NC. The Subcommittee will review the status of the NDE of cast stainless steel piping.

Combustion Engineering Reactor Plants, Date to be determined (November/December), Washington, DC. The Subcommittee will initiate its review of CESSAR-Plus (CE's Advanced LWR for the 1990's).

Safety Philosophy, Technology, and Criteria, Date to be determined (November/December), Washington, DC. The Subcommittee will meet with the NRC Staff and discuss their proposed plans for implementation of the Safety Goals Policy.

Severe Accidents, Date to be determined (November/December) (tentative), Washington, DC. The Subcommittee will review the final version of the NRC Staff's proposed generic letter on Individual Plant Examinations (IPEs).

Diablo Canyon, Date to be determined (late November/early December), Location to be determined. The Subcommittee will review the status of the Diablo Canyon Long-Term Seismic Program.

Westinghouse Reactor Plants, Date to be determined (December/January), Washington, DC. The Subcommittee will discuss and hear presentations from Westinghouse representatives regarding the important design features and objectives of WAPWR (RESAR SP/90) and the AP 600 designs.

Auxiliary Systems, Date to be determined (January) (tentative), Washington, DC. The Subcommittee will discuss: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water System design, and (3) criteria being used by the NRC Staff to review the Chilled Water System design. To facilitate this discussion, some members of the Subcommittee will tour the Shearon Harris plant to look at the Chilled Water System design at that plant.

Structural Engineering, Date to be determined (3rd week of January), Albuquerque, NM. The Subcommittee will review the results of the model concrete containment test.

Thermal-Hydraulic Phenomena, Date to be determined (3rd week of January, 2-day meeting), Los Alamos, NM. The Subcommittee will review: (1) The documentation developed by LANL to support the TRAC PF1/MOD 1 Code pursuant to the RES CSAU requirements, and (2) final ECCS Rule version (tentative).

Auxiliary Systems, Date to be determined (February), Washington, DC. The Subcommittee will discuss the final report on the Fire Risk Scoping Study being performed by Sandia National Laboratories for the NRC.

Decay Heat Removal Systems, Date to be determined (February), Washington, DC. The Subcommittee will continue its review of the NRC-RES Resolution Position for USI A–45.

Containment Requirements, Date to be determined (February/March), Washington, DC. The Subcommittee will review the hydrogen control measures for BWRs and Ice Condenser PWRs (USI A–48). May also involve EPGs for BWRs.

Containment Requirements, Date to be determined (April), Washington, DC. The Subcommittee will review the NRC Staff's document on containment performance and improvements (all containment types).

ACRS Full Committee Meeting

November 5–7, 1987: Items are *tentatively* scheduled.

**A. Nuclear Power Plant Technical Specifications (Open)*

Consider proposed NRC policy statement regarding the scope, etc., of Technical Specifications for nuclear power plants. Members of the NRC Staff will take part in the discussion.

**B. Use of Probabilistic Risk Assessment (Open)*

Briefing and discussion of NRC Staff response to ACRS recommendations regarding use of NUREG–1150, Reactor Risk Reference Document and the proposed implementation plan for NRC Quantitative Safety Goals.

**C. Standardization of Nuclear Power Plants (Open)*

Briefing regarding proposed EPRI requirements for advanced LWRs. Representatives of the NRC Staff and the nuclear industry (EPRI) will participate as appropriate.

**D. TVA Nuclear Power Plant Operations (Open)*

Consider proposed TVA Corporate Management Plan and proposed restart of the Sequoyah Nuclear Plant. Representatives of the NRC Staff and of the TVA will participate.

E. Internal Management of NRC Activities (Closed)

Discussion among ACRS members and meeting with NRC Commissioners regarding internal allocation of NRC resources and manpower to provide advice regarding nuclear radwaste.

**F. Station Blackout (Open)*

Briefing and discussion regarding proposed resolution of USI A–44, Station Blackout and related NUMARC activities.

G. Nomination of ACRS Officers for CY–1988 (Closed)

Discuss qualifications of ACRS members considered eligible for selection as Committee Officers for CY 1988.

**H. Future ACRS Activities (Open)*

Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee. Discuss proposed ACRS position/comments regarding legislative proposals to expand/abolish ACRS activities.

**I. Nuclear Power Plant License Renewal (Open)*

Briefing and discussion of proposed NRC policy regarding renewal of nuclear power plant operating licenses (tentative).

**J. Meeting with Director, NRC Office of Research (Open)*

Discuss items of mutual interest (tentative).

K. Appointment of New ACRS Members (Closed)

Discuss qualifications of nominees proposed for consideration as new ACRS members (tentative).

**L. Safety Implications of Control Systems (Open)*

Consider proposed resolution of USI A–47, Safety Implications of Control Systems, as well as comments by Mr. D. Basdekas regarding this matter as it relates to B&W nuclear power plants.

**M. Maintenance of Nuclear Facilities (Open)*

Status report regarding proposed NRC policy statement regarding maintenance practices at nuclear facilities.

**N. Babcock & Wilcox LWR Design Assessment (Open)*

Status report regarding the B&W/NRC design reassessment of the long-term safety of B&W light water reactor (tentative).

**O. Analysis and Evaluation of Operational Data (Open)*

Briefing and discussion regarding AEOD's evaluation of nuclear power plant operating experience.

**P. Diagnostic Evaluation Program (Open)*

Briefing regarding NRC's diagnostic evaluation program, including evaluation of the Dresden Nuclear Power Station.

**Q. ACRS Subcommittee Activities (Open/Closed)*

Briefings regarding the status of assigned ACRS subcommittee activities, including the safety and regulation of nuclear power plants.

**R. Nuclear Safety Research (Open)*

Discuss proposed ACRS recommendations regarding the NRC nuclear radwaste research program.

**S. Nuclear Radwaste Management (Open)*

Report of ACRS subcommittee activities regarding NRC's high-level and low-level radwaste program. Proposed ACRS comments on topics will be discussed as appropriate.

**T. Decay Heat Removal (Open)*

Briefing by NRC Staff regarding the status of resolution of USI A–45, decay heat removal from nuclear power plants.

**U. Integrated Safety Assessment Program (Open)*

Discuss proposed ACRS comments regarding proposed NRC Staff implementation of the ISAP.

**V. Preparation of ACRS Reports to the NRC (Open)*

Discuss proposed ACRS reports to the NRC regarding items considered during this meeting, as well as, safety implications of control systems in nuclear power plants.

December 3–5, 1987—Agenda to be announced.

January 7–9, 1988—Agenda to be announced.

Dated: October 14, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–24144 Filed 10–16–87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–16047; File No. 812–6861]

Fidelity Investment Life Insurance Co., et al.; Application

October 13, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: Fidelity Investment Life Insurance Company ("Fidelity Life"), Fidelity Investments Variable Annuity Account I ("Separate Account"), and Fidelity Distributors Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Account in connection with the issuance and sale of variable annuity contracts.

Filing Date: September 2, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109, Attention: Rodney R. Rohda.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272–3017 or Lewis B. Reich, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Fidelity Life, a stock life insurance company, established the Separate Account under Pennsylvania law on July 22, 1987, for the purpose of funding certain variable annuity contracts ("Contracts"). The Separate Account is currently seeking registration under the Act as a unit investment trust.

2. The Separate Account has five subaccounts which will invest in shares of the portfolios of the Variable Insurance Products Fund ("Fund"), a Massachusetts business trust registered under the Act as an open-end, diversified management investment company.

3. The minimum initial payment required to purchase a Contract is $5,000. Additional payments of $500 or more may be made prior to the annuity date.

4. Fidelity Life imposes an asset-based administrative charge at an annual rate of .25% to compensate it for expenses incurred in administering the Contracts. These expenses include the costs of issuing the Contract, maintaining necessary systems and records, and providing reports. Fidelity Life does not anticipate a profit from this charge.

5. Fidelity Life deducts a daily asset charge at an annual rate of .75% for its assumption of certain mortality and expense risks under the Contracts. Two-thirds of this charge (.50%) is allocated to mortality risks. The mortality risks borne by Fidelity Life include: the obligation to make the monthly annuity payments for the life of the annuitant; the provision of a limited death benefit if the annuitant dies prior to the annuity date; and the provision of annuity rates guaranteed in the Contracts. The remaining third of this charge (.25%) is alloated to the expense risk. Fidelity Life assumes the expense risk that the deduction of the administrative charge may prove insufficient to cover the actual cost of administering the Contracts.

6. Fidelity Life will realize a gain from the mortality and expense risk charge to the extent that amounts derived from that charge are not needed to provide for benefits and expenses under the Contracts.

7. Fidelity Life does not assess a sales charge under the Contract if the owner maintains the Contract in force for more than five years. If the owner surrenders all or part of the Contract within the first five Contract years, Fidelity Life will reduce the amount payable to the owner by a contingent deferred sales charge equal to 5% in the first contract year and declining 1% each year for Four years thereafter. In the sixth Contract year no contingent deferred sales charge will be applied to withdrawals or surrenders under the Contract. In addition, during the first five Contract years, no contingent deferred sales charge is assessed against the first withdrawal in each Contract year of an amount up to 10% of the owner's premium payments as of the date of withdrawal.

8. Applicants expect that the contingent deferred sales charge will not be sufficient to cover the expenses incurred in selling the Contracts. To the extent that the contingent deferred sales charge fails to cover distribution expenses, Fidelity Life will pay these expenses from its general assets which may include proceeds from the mortality and expense risk charge.

9. Fidelity Life represents that the mortality and expense risk charge is a reasonable charge to compensate it for the assumption of mortality and expense risks.

10. Fidelity Life represents that the charge of .75% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon Fidelity Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Fidelity Life will maintain at its executive office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

11. Fidelity Life acknowledges that any profit realized from the mortality and expense risk charge may be applied

to distribution expenses. Fidelity Life has concluded that there is a reasonable likelihood that this proposed distribution financing arrangement will benefit the Separate Account and the Contract owners. The basis for this conclusion is set forth in a memorandum which will be maintained by Fidelity Life at its executive office and will be available to the Commission.

12. Fidelity Life represents that the Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b–1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–24132 Filed 10–16–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–25033; File No. SR–NASD–87–36]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASDAQ Workstation Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed this proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to establish the NASDAQ Workstation Service on a permanent basis and to set the applicable fees. At the conclusion of the current pilot program,[1] subscribers electing the service will be obligated to pay the following monthly charges:

Access to NASDAQ Workstation Service.	$300 per PC.
Maintenance (offered only on UNISYS and Tandem PCs).	$55 per PC.
Advanced Communications.	$135 First PC, $85 each additional PC.

Assuming Commission approval, the foregoing fees will be incorporated into standardized service and equipment support contracts for subscribers of the NASDAQ Workstation Service. The NASD also proposes to allow subscribers eligible to receive NASDAQ Level 2 service the option of obtaining NASDAQ Workstation Service. The proposed charges would apply equal to each NASDAQ Workstation subscribers. The maintenance package, however, is optional. In that connection, the NASD would also offer the maintenance option, on identical terms, to any Level 2/3 subscriber employing UNISYS or Tandem equipment to emulate a Harris standard terminal. Such emulations, though independent of the NASDAQ Workstation Service, involve the same PC equipment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NASDAQ Workstation Service constitutes a major NASD initiative to enhance the equipment and communications network used to deliver NASDAQ market data to subscribers. This initiative is intended to allow subscribers served directly by the NASD, I.E., those who currently receive Level 2/3 Service from NASDAQ, Inc., to obtain enhanced market information through the new subscriber-owned NASDAQ Workstation PC. With the new Workstation Service, delivery of current market data to a subscriber will no longer require individual queries that must be separately processed by NASDAQ, Inc.'s mainframe computers. Instead, specified market information relating to securities selected by the subscriber will be broadcast to the Workstation PC for storage, processing, and retrieval as needed. The PCs approved for the NASDAQ Workstation Service will have ample storage capacity to permit creation of a local data base to satisfy the subscriber's needs. This feature should reduce response times for subscribers' queries and result in more efficient utilization of NASDAQ. Inc.'s mainframe computers. The end result is more expeditious delivery of a greater amount of NASDAQ market data than is now possible with the Harris standard terminal. The latter equipment, introduced in 1981, is basically an interrogation device that lacks the processing and memory capacities found in PCs like those approved for the Workstation Service.

In addition to the approved PCs, the Workstation Service involves usage of specialized software developed by NASDAQ, Inc. That software provides sophisticated data management capabilities which enable subscribers to organize and display NASDAQ quotation and NASDAQ/NMS last sale information in various ways to suit their needs. For example, the software features include: (i) A market minder/limit watch with dynamic updates on the status of a group of securities selected by the subscriber; (ii) specialized displays programmed by a subscriber to observe inside quotation changes, quote updates of individual market makers, and last sale reports for NASDAQ/NMS securities; (iii) bid/ask retrieval with dynamic updates of the displayed securities' quotes; and (iv) multiple screen segments that can be utilized to display market data customized to the subscriber's needs. These features, which are accessible through a single PC, illustrate the flexibility and sophistication of the data management capabilities being offered to subscribers of the NASDAQ Workstation Service. Similarly, these features serve to differentiate the NASDAQ Workstation Service from the more limited informational capabilities offered to subscribers utilizing the Harris standard terminal.

NASDAQ Workstation Service commenced with the Commission's

[1] *See* File No. SR–NASD–87–29 for a description of the NASDAQ Workstation Service and the terms of the related pilot program.

issuance of an order authorizing a pilot program from July 31 to October 1, 1987.[2] During this period, participating NASDAQ market makers have been able to utilize the service, at no charge, in order to familiarize themselves with its features. Based on that experience, the participants will have objective information to factor into their decision on whether to continue NASDAQ Workstation Service after the pilot period. The purposes of this rule proposal are to obtain Commission approval of the following: Permanent (versus pilot) status for the NASDAQ Workstation Service; the charges that will apply prospectively to subscribers; and expanded access to non-market maker subscribers.

The instant filing proposes two categories of monthly fees which subscribers will pay for each NASDAQ Workstation terminal. First, there is a monthly service fee of $300 that was computed to be revenue neutral and consists of three components: (i) Recovery of developmental costs; (ii) replacement of the monthly service fee currently payable by NASDAQ Level 2/3 subscribers; and (iii) replacement of revenue from the $.02/ query charge which cannot be assessed directly to subscribers who opt for NASDAQ Workstation Service.[3] Because NASDAQ Workstation PCs can displace existing Harris standard terminals on a one-for-one basis, the NASD seeks to avoid any diminution of revenues that might result from this process. Accordingly, the NASD has computed a monthly service fee that approximates the average, service-based revenue generated by a Harris terminal in operation today.

The second category of fees payable by NASDAQ Workstation subscribers consists of two elements, equipment maintenance and communications support. Although the NASD will have no proprietary interest in the PCs used for the NASDAQ Workstation Service, the Association recognizes that a high level of functionality is exceedingly important for NASDAQ market makers and the investing public. Accordingly, the NASD has contracted with the Harris Corporation to provide a cost-effective maintenance package for subscribers utilizing compatible PCs produced by two firms. Although this service is optional, the NASD anticipates that its cost, coupled with Harris' maintenance experience respecting the existing terminal population, will induce broad acceptance of this maintenance package. The proposed maintenance charge of $55/PC/month is fully cost-based with two components: (i) A pass-through charge payable to Harris Corporation pursuant to a maintenance agreement with the NASD and (ii) a charge reflecting the allocable portion of general and administrative costs. Similarly, the communications support charge of $135 is fully cost-based in that it is calculated to recover: (i) The costs incurred by NASDAQ, Inc. in acquiring, installing, and maintaining specialized modems needed to provide NASDAQ Workstation Service to subscribers and costs related to the equipment replaced; (ii) the allocable costs of technical staff who monitor the NASDAQ communications network to isolate and correct problems traceable to that network versus other sources; and (iii) a charge reflecting the allocable portion of general and administrative costs.[4] Thus, the NASD's communications support charge consists exclusively of the direct and allocable indirect costs incurred in delivering the NASDAQ Workstation Service to a projected base of subscribers.

The major change introduced by this filing is the establishment of subscriber fees that would take effect at the pilot's conclusion. In this regard, section 15A(b)(5) of the Act holds the Association to a standard of reasonable fees equitably allocated in setting charges for automation services offered to members and non-members alike. The fee structure posed for the NASDAQ Workstation Service is substantially cost-based to assure a reasonable, composite charge to all subscribers. Specifically, derivation of the proposed fee structure recognizes the direct and indirect costs traceable to the technical development, start-up, and reliable delivery of NASDAQ Workstation Service to a projected subscriber base. This approach is clearly evident in the components of the maintenance and communications support charges identified above. Further, the proposed monthly service charge is calculated to recover developmental costs and to maintain the revenue stream generated today through service and query charges currently paid by the targeted subscribers. Revenue maintenance is justified because a NASDAQ Workstation PC can displace existing Harris terminals on a one-for-one basis. Continuity of service-based revenue is essential to offset a portion of the costs of various operational support departments and regulatory programs which depend upon the NASDAQ data base. In light of all of these factors, the NASD posits that the proposed fee structure for the NASDAQ Workstation Service satisfies the elements of reasonableness and equitable allocation prescribed by section 15A(b)(5) of the Act.

Regarding the permanent status of and the expanded access to NASDAQ Workstation Service, the NASD cites sections 11A and 15A of the Act as providing the necessary statutory bases. Subsections (A) through (D) of section 11A(a)(1) contain a series of Congressional findings respecting the goals of a national market system. The theme underlying these provisions is that of enhancing market efficiency through application of advanced data processing and communications technologies. The NASDAQ Workstation Service combines powerful PC's with specialized software developed by NASDAQ, Inc. to provide state-of-the-art data management capabilities to all interested subscribers. In particular, the NASDAQ Workstation's market monitoring and display capabilities were designed to increase the operational efficiency of subscribing market makers, to increase their competitiveness, and to contribute to the liquidity of the NASDAQ market. Further, many of the Workstation's data management features could be useful to professional money managers and institutional investors who may now subscribe to NASDAQ Level 2 service. Permitting all categories of subscribers to utilize NASDAQ market data more effectively comports with the broad policy goals articulated under section 11A(a)(1) of the Act.

The Association also relies on section 15A(b)(6) of the Act in support of this proposal. Section 15A(b)(6) requires, inter alia, that the Association's rules promote just and equitable principles of trade, facilitate securities transactions, perfecvt the mechanism of a free and open market and a national market

[2] Securities Exchange Act Release No. 24749 (July 27, 1987), approving File No. SR-NASD-87-29. The NASD will shortly submit a filing to extend the duration of the pilot program through October 31, 1987.

[3] The $.02/query charge, which covers the costs of lines between the regional concentrators and subscribers' terminals as well as dial back-up capability, is currently paid by all NASDAQ Level 2/3 subscribers utilizing Harris standard terminals owned by NASDAQ, Inc. Queries entered by these subscribers are processed by the NASD's mainframe computer and responses resent through the NASDAQ network. In contrast, queries entered by subscribers accessing the NASDAQ Workstation PC will be processed by that subscriber's local data base. Hence, the usage based query fee that now covers these communications charges can no longer be applied to the NASDAQ Workstation Service.

[4] The lower communications support charge of $85 for additional terminals reflects certain economies in the substitution and maintenance of multiple PC modem sharing devices at the same subscriber location.

system, and generally protect investors and the public interest. Allowing non-market makers to elect NASDAQ Workstation Service broadens access to the advanced data management features that it provides. Broader access translates to more opportunities for subscribers to utilize NASDAQ market data more efficiently in making trading decisions. To encourage the broadest possible access, existing Level ⅔ subscribers will be allowed to substitute NASDAQ Workstations for Harris terminals, notwithstanding the terms of their outstanding agreements with NASDAQ, Inc. The NASD submits that broad access to the advanced data management capabilities attributable to the NASDAQ Workstation software will serve to facilitate securities transactions, advance the policy goals underlying a national market system, and generally protect investors and the public interest. Accordingly, approval of the instant filing is fully consistent with the above-cited elements.

In sum, the NASD believes that Commission approval of this proposal can be readily grounded upon its conformance with the respective policy goals and requirements of sections 11A(a)(1)(A) through (D), and 15A(b)(5) through (6) the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The instant proposal does not portend the imposition of any competitive burden. This conclusion is supported by several factors. First, subscription to the NASDAQ Workstation Service will be voluntary and open to any subscriber on the same terms. A firm's decision to elect the new service will be based upon an assessment of its costs and benefits relative to accessing the desired level of NASDAQ service via Harris standard terminal or the NQDS service from independent vendors. Second, the NASD will continue to make available the Harris terminal equipment. The NASD expects that many firms opting for NASDAQ Workstation Service will continue to use some of their existing Harris terminals. Third, the modifications embodied in this filing do not create a competitive burden vis-a-vis vendors of securities market information. Provision of the new service does not impair any vendor's ability to access NASDAQ market makers' quotes (i.e., the NQDS service) or NASDAQ/NMS last sale reports via high speed data feeds. Moreover, because the service fee is revenue neutral and the support changes fully cost-based, the projected fee structure does not undercut the competitiveness of vendors in servicing non-market makers. Fourth, it must be emphasized that the NASDAQ Workstation Service was principally designed to provide sophisticated data management capabilities to NASDAQ market makers. Such capabilities promote greater efficiency in market maker's routine activities and thereby enhance the quality of the NASDAQ marketplace. This situation is analogous to an exchange's upgrading of systems that support market making on a physical trading floor. Consequently, permanent status for the NASDAQ Workstation Service does not pose a competitive threat to vendors servicing a much broader range of end users.

Based upon the foregoing, it is believed that no competitive burden will result from the Commission's approval of this filing.

C. Self-Regulatory Organization's Statement on Comments On the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** [5] or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 29, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 15, 1987.

[FR Doc. 87-24256 Filed 10-16-87; 9:25 am]

BILLING CODE 8010-01-M

[5] The NASD has requested that the Commission approve the proposal prior to 30 days after publication of the proposal in the **Federal Register** in order to ensure continuity in servicing NASDAQ Workstation subscribers who elect the service at the end of the pilot program on October 31, 1987.

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-5134]

Control Data Community Ventures Fund, Inc.; Filing of an Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to the Regulations governing small business investment companies (13 CFR 107.601 (1987)) for the transfer of ownership and control of Control Data Community Ventures Fund, Inc, 8100 34th Street South, Minneapolis, Minnesota 55440, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of Control Data Community Ventures Fund, Inc., which was licensed on January 29, 1979, is subject to the prior written approval of SBA.

It is proposed that Capital Dimension, Inc. a holding company, will acquire all of the issued and outstanding capital stock of Control Data Community Ventures Fund, Inc., from Control Data Corporation. Upon completion of the transaction, Control Data Community Ventures Fund, Inc., will change its name to Capital Dimensions Venture Fund, Inc.

The proposed officers, directors and sole shareholder are as follows:

Name and Address	Title or Relationship	Percent of Ownership
Thomas F. Hunt, Jr., 1404 Echo Drive, Burnsville, Minnesota 55337	President, Director	
Dean R. Pickerell, 15120 Evelyn Lane, Minnetonka, Minnesota 55345	Executive Vice President, Secretary, Treasurer, Director	
David J. Skoog, 6604 Cornelia Drive, Edina, Minnesota 55435	Director	
Capital Dimensions, Inc., Suite 148, 1631 79th Street East, Minneapolis, Minnesota 55420	Sole Shareholder, Investment Advisor	100

Mr. Hunt and Mr. Pickerell are the sole common stockholders of Capital Dimensions, Inc.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management, and the probability of successful operations under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Minneapolis, Minnesota.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 8, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-24102 Filed 10-16-87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2292]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 7, 1987, I find that Los Angeles County and the adjacent County of Orange in the State of California constitute a disaster loan area because of damage from an earthquake and continuing aftershocks beginning on October 1, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on December 7, 1987, and for economic injury until the close of business on July 7, 1988, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 229202 for physical damage and for economic injury the number is 656600.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 9, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87-24138 Filed 10-16-87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #6565]

Texas; Declaration of Disaster Loan Area

Comal County, Texas, constitutes an Economic Injury Disaster Loan Area due to flooding of the Guadalupe and Comal Rivers during June, July, and August 1987. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on July 8, 1988, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9.0 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002).

Dated: October 8, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-24139 Filed 10-16-87; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Meeting; Chicago, IL

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Chicago, will hold a public meeting at 10:00 a.m. on Friday, October 23, 1987, at 219 South Dearborn, Dirksen Federal Building, Room 1220, Chicago, Illinois, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John L. Smith, District Director, U.S. Small Business Administration, 219 South Dearborn St., Room 437, Chicago, Illinois, 312/353-4508.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 1, 1987.

[FR Doc. 87-24133 Filed 10-16-87; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting; Kansas City, MO

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Kansas City, will hold a public meeting at 10:30 a.m. on Monday, November 9, 1987, at United Missouri Bank Building Auditorium, 10th and Grand, Kansas City, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Bill Powell, Regional Administrator, U.S. Small Business Administration, 911 Walnut, 13th Floor, Kansas City, Missouri, (816) 374-3316.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 1, 1987.

[FR Doc. 87-24134 Filed 10-16-87; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Salt Lake City, UT

The U.S. Small Business Administration Region VIII Advisory

Council, located in the geographical area of Salt Lake City, Utah will hold a public meeting at 9:00 a.m. on Thursday, November 12, 1987 at the Salt Lake Hilton Hotel, 150 West 500 South, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah 84138, (801) 524–5804.

Jean M. Nowak,

Directory, Office of Advisory Councils.

October 1, 1987.

[FR Doc. 87–24136 Filed 10–16–87; 8:45 am]

BILLING CODE 8025–01–M

Wyoming District Advisory Council Meeting

The U.S. Small Business Administration Wyoming District Advisory Council, located in the geographical area of Wyoming, will hold a public meeting at 9:00 a.m., on Wednesday, October 28, 1987, at the Federal Building—100 East "B" Street, Room 3116, Casper, Wyoming, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, P.O. Box 2839, Casper, Wyoming 82602, (307) 261–5761.

Jean Mr. Nowak,

Director, Office of Advisory Councils.

October 1, 1987.

[FR Doc. 87–24135 Filed 10–16–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–87–076]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Tuesday and Wednesday, November 10 and 11, 1987, at the Travelodge at the Wharf, 250 Beach Street, San Francisco, California, beginning at 9:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows:

1. Introduction of new Committee Sponsor.
2. Review of action taken at the 39th meeting of the Council.
3. Members' items.
4. Executive Director's report.
5. Consumer Education Subcommittee report.
6. Horsepower Regulation Subcommittee report.
7. Presentation on industry trends.
8. Report on non-emergency assistance.
9. Report on National Association of State Boating Law Administrators Association (NASBLA) annual conference.
10. Report of the Hull Identification Number (HIN) Subcommittee.
11. Presentation on "Thrillcraft".
12. Update on boating safety "Hotline".
13. Status report on mandatory operator education.
14. Update on the Personal Flotation Device (PFD) pamphlet project.
15. Presentation on implementation of the North American Datum of 1983.
16. Update on intoxicated boater project.
17. Remarks by Chief, Office of Boating, Public, and Consumer Affairs.
18. Reply to members' items.
19. Chairman's session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R. E. Hammond, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G–BBS), Washington, DC 20593–0001, or by calling (202) 267–0997.

Issued in Washington, DC.

W. P. Hewel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87–24169 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–14–M

[CGD–87–077]

National Boating Safety Advisory Council Subcommittee on Consumer Education; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Consumer Education to be held on Monday, November 9, 1987 at the Travelodge at the Wharf, 250 Beach St., San Francisco, California, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Briefing on new initiative by the boating industry (National Marine Manufacturers Association) to educate new boaters in the basics of safe boating, and proposed steps to curb intoxicated boater operation. Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R. E. Hammond, Exectutive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G–BBS), Washington, DC, 20593–0001, or by calling (202) 267–1060.

Issued in Washington DC.

W.P. Hewel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87–24170 Filed 10–16–87; 8:45 am]

BILLING CODE 4910–14–M

[CGD–87–078]

National Boating Safety Advisory Council Subcommittee on Hull Identification Number (HIN); Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Hull Identification Number (HIN) to be held on Monday, November 9, 1987 at the Travelodge at the Wharf, 250 Beach St., San Francisco, California, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Discuss the possibility of adding additional characters to the Hull Identification Number (HIN) to assist in recovering stolen boats.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any memnber of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R.E. Hammond, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BBS), Washington, DC 20593-0001, or by calling (202) 267-1060.

Issued in Washington, DC.

W.P. Newel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87-24171 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD-87-079]

National Boating Safety Advisory Council Subcommittee on Horsepower Regulation; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Horsepower Regulation to be held on Monday, November 9, 1987 at the Travelodge at the Wharf, 250 Beach Street, San Francisco, California, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Review and discuss the proposed changes in safe powering regulations for tiller steered boats.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R.E. Hammond, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BBS), Washington, DC 20593-0001, or by calling (202) 267-1060.

Issued in Washington, DC.

W.P. Newel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87-24172 Filed 10-16-87; 8:45 am]

BILLING CODE 4910-14-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 201
Monday, October 19, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, October 13, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of The Peoples Bank, Nelsonville, Ohio, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in The Security Bank, Athens, Ohio, and for consent to establish the three offices of The Security Bank as branches of The Peoples Bank.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,110
Oklahoma City Consolidated Office, Oklahoma City, Oklahoma

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 14, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-24214 Filed 10-15-87; 1:51 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: October 13, 1987, 52 FR 38039.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 14, 1987, 10:00 a.m.

CHANGE IN THE MEETING: The following Item has been added:

Item No., Docket No., and Company

RP-5
Docket No. RM87-34-000, Regulation of Natural Gas Pipelines After Wellhead Decontrol

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24198 Filed 10-15-87; 11:09 am]

BILLING CODE 6717-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 19, 1987:

Open meetings will be held on Tuesday, October 20, 1987, at 10:00 a.m. and on Wednesday, October 21, at 2:00 p.m., in Room 1C30. A closed meeting will be held on Tuesday, October 20, 1987, following the 10:00 a.m. open meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, October 20, 1987, at 10:00 a.m., will be:

1. Consideration of whether to propose for public comment amendments to Rule 204-2, the recordkeeping rule under the Investment Advisers Act of 1940. The proposed amendments would require advisers to retain, for Commission inspection, all advertisements and supporting records for performance information in advertisements. These advertisements and supporting records would be required to be kept for five years from the end of the fiscal year in which the advertisement was last published. For further information, please contact Dorothy M. Donohue at (202) 272-7317.

2. Consideration of whether to adopt an amendment to Rule 19b-1 under the Investment Company Act of 1940. The amendment would allow certain registered investment companies to make one additional distribution of long-term capital gains with respect to a taxable year for the purpose of not incurring any excise tax. The Commission will also consider adopting technical changes to the rule to correct certain references to prior distributions and the Internal Revenue Code. For further information, please contact Brian Kaplowitz at (202) 272-2048.

3. Consideration of whether to adopt Rule 6c-9 and Form N-6C9 under the Investment Company Act of 1940. Rule 6c-9 would provide an exemption from the provision of the Act, under certain conditions, to permit foreign banks to offer their own debt securities or non-voting preferred stock in the United States without registering as investment companies or obtaining exemptive orders. The exemption would also be available where a foreign bank offers its securities in the United States indirectly through a finance subsidiary. The form would be filed by a foreign bank or foreign finance subsidiary to appoint a United States agent for service of process. For further information, please contact Ann M. Glickman at (202) 272-3042.

4. Consideration of whether to issue a release adopting an amendment to Rule 3a12-8 under the Securities Exchange Act of 1934 that would designate as exempted securities, solely for purposes of the trading and marketing in the U.S. of futures contracts on those securities, debt securities issued by the governments of Australia, France and New Zealand. For further information, please contact David Underhill at (202) 272-2375.

The subject matter of the closed meeting scheduled for Tuesday, October 20, 1987, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.
Formal order of investigation.

The subject matter of the open meeting scheduled for Wednesday, October 21, 1987, at 2:30 p.m., will be:

The Commission will meet with representatives of the Financial Executives Institute (FEI) Committee on Corporate Reporting to discuss various accounting and reporting matters of mutual interest. The discussion will include the SEC's electronic data gathering, analysis and retrieval system

(Edgar). FEI's initiative on summary reporting, the Report of the Treadway Commission and various projects being undertaken by the FASB and Auditing Standards Board. For further information, please contact Jack Albert or Bob Lavery at (202) 272–2130.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272–2149.

Shirley E. Hollis,

Assistant Secretary.

October 14, 1987.

[FR Doc. 87–24165 Filed 10–14–87; 4:34 pm]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1394]

TIME AND DATE: 10 a.m. (CDT), Wednesday, October 21, 1987.

PLACE: City Hall, Council Chamber, 402 Lee Street, NE., Decatur, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 23, 1987.

Discussion Item

1. Progress Report on the Aquatic Weed Problem in TVA Reservoirs.

Action Items

B–Purchase Awards

B1. Invitation SA–02493A—Indefinite Quantity Term Agreement for Marginally Punched Continuous Form Paper.

B2. Request for Proposal AA–466203—Total Ash Management Program for John Sevier Fossil Plant.

C—Power Items

C1. Supplement to Contract No. TV–62313A with the State of Alabama for Cooperation in the Development and Implementation of Radiological Emergency Plans as Required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

D—Personnel Items

D1. Revised Pay Plan and Salary Schedule for the Management and Specialist Schedule, and the Physician Schedule.

D2. Consulting Contract with Duff and Phelps, Inc., Chicago, Illinois, Covering Arrangements for Services of William A. Abrams to Advise on Financing of the TVA Power Program, Requested by the Office of Power.

D3. Supplement to Personal Services Contract No. TV–71877A with Shaw, Pittman, Potts, and Trowbridge, Washington, DC, for Legal Services, Requested by the Office of the General Counsel.

E—Real Property Transactions

E1. Sale of Noncommercial, Nonexclusive Permanent Easement to James H. Lane for Construction and Maintenance of Recreation Water Use Facilities, Affecting a Total of 0.1 Acre of Tellico Reservoir Shoreline in Monroe County, Tennessee—Tract No. XTELR–56RE.

E2. Grant of Permanent Easement to the City of Oak Ridge, Tennessee, for Road and Utility Purposes, Affecting Approximately 0.47 Acre of Melton Hill Reservoir Land in Anderson County, Tennessee—Tract No. XTMHR–17H.

E3. Grant of Permanent Easement for a Road Right-of-Way Affecting 1.03 Acres of Kentucky Reservoir Land in Exchange for a Permanent Road Right-of-Way Easement to be Granted TVA Affecting 3.33 Acres of Adjoining Private Property Owned by J.W. Green—Tract Nos. XGIR–912H and GIR–8685E.

E4. Resolution Declaring Approximately 21 Acres of Tims Ford Reservoir Land in Franklin County, Tennessee, as Surplus and Authorizing its Sale at Public Auction by Tennessee Elk River Development Agency as Agent for TVA, as Part of Robinson Hollow Cabin Sites Subdivision Development—Tract No. XTMFR–18.

E5—Filing of Condemnation Cases.

[1] F1. Agreement with United States Army Toxic and Hazardous Materials Agency for Reimbursable Services Related to Environment Activities at the Phosphate Development Works Disposal Area at the National Fertilizer Development Center in Muscle Shoals.

F2. Memorandum of Understanding No. TV–73618A with the National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce, Covering Arrangements for Performance of Charting Work by TVA.

F3. TVA Code Relating to Employee Recognition Program.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: October 14, 1987.

John G. Stewart,

Manager of Policy, Planning and Budget.

[FR Doc. 87–24196 Filed 10–15–87; 11:09 am]

BILLING CODE 8120–01–M

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[1] Item approved by individual Board members. This would give formal ratification to the Board's action.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE COMMISSION MEETING

DATE AND TIME: October 28–29, 1987

PLACE: Empire Blue Cross/Blue Shield Building, Board Room, 622 Third Avenue, New York, New York

STATUS:

October 28, 1987, 9:00 a.m.–11:00 a.m. *Closed*

Section 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR Part 1703

October 28, 1987, 11:15 a.m.–5:15 p.m. *Open*

October 29, 1987, 8:30 a.m.–4:30 p.m. *Open*

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of Minutes
Executive Diretor's Report:
- FY 1987 End-of-Year Program Report
- Administrative Report

NCLIS Committee Reports:
- Bicentennial
- Budget and Finance
- International
- Program Review
- Public Affairs
- Recognition Awards
- 1989 White House Conference on Library and Information Services

OMB Clearance Report
Privatization Information Resources
Walgren Letter:
- HR 2159
- HR 2160

Cultural Minority Task Force
NCLIS FY 1988 Program Plans
Chief Officers of State Library Agencies Briefing, Nettie Taylor, Maryland State Librarian
Guest Speaker: Joseph Shubert, New York State Librarian
Sensitive But Not Classified Information—Recommendations
Glenerin Declaration
FBI Library Awareness Program

Special provisions will be made for handicapped individuals. Call Jane McDuffie (202) 254–3100 no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Vivian J. Arterbery, NCLIS Executive Director, 1111 18th Street, Suite 310, Washington, DC 20036, (202) 254–3100.

Dated: October 13, 1987.

Jane D. McDuffie,

Staff Assistant.

[FR Doc. 87–24207 Filed 10–15–87; 8:45 am]

BILLING CODE 7527–01–M

Corrections

Federal Register
Vol. 52, No. 201
Monday, October 19, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/49A; FRL-3273-9]

Preliminary Determination To Cancel Certain Registrations of Tributyltin Products Used as Antifoulants; Availability of Technical Support Document and Draft Notice of Intent to Cancel

Correction

In notice document 87-23177 beginning on page 37510 in the issue of Wednesday, October 7, 1987, make the following corrections:

1. On page 37514, in the first column, in paragraph 5., in the 15th line, "300" should read "3000", and the 20th line should read: "concentration 3000 times greater than the ambient water column concentration when the solid".

2. On page 37515, in the second column, in the second complete paragraph, in the fourth line, "do not" should read "do not use".

3. On page 37516, in the first column, in the second paragraph, in the 10th line, "has reformed" should read "has performed".

4. On the same page, in the third column, in the first complete paragraph, the last line should read: "about 20 $\mu g/cm^2$/day.".

5. On page 37518, in the second column, under *G. Proposed Regulatory Decision*, in the sixth line, "cm^2 14 days" should read "cm^2/14 days", and in the eighth line, "cm^2 day" should read "cm^2/day;".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations Nos. 4 and 16]

Disability Insurance and Supplemental Security Income; Qualifications of Medical Professionals Evaluating Mental Impairments

Correction

In rule document 87-20679 beginning on page 33921 in the issue of Wednesday, September 9, 1987, make the following correction:

PART 404—[CORRECTED]

On page 33926, in the third column, after amendatory instruction 4., in the first line, "Part 104" should read "Part 404".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 87-126]

Decision on Domestic Interested Party Petition Concerning Classification of Orange Juice Concentrate-Based Product

Correction

In rule document 87-23183 beginning on page 37443 in the issue of Wednesday, October 7, 1987, make the following corrections:

1. On page 37443, in the third column, under **SUMMARY**, in the ninth line, "specifically" should read "specially".

2. On page 37444, in the first column, in the fourth and ninth lines, "specifically" should read "specially".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 87-125]

Petitioner's Desire To Contest Decision Denying Domestic Interested Party Petition Concerning Classification of Fiber Reinforced Cellulosic Plastic Sausage Casings

Correction

In rule document 87-23182 beginning on page 37442 in the issue of Wednesday, October 7, 1987, make the following corrections:

1. On page 37442, in the second column, under **SUMMARY**, in the 15th and 20th lines, "specifically" should read "specially".

2. On page 37443, in the second column, in the third complete paragraph, in the seventh line, "Trade of" should read "Trade or".

BILLING CODE 1505-01-D

Federal Register

Monday
October 19, 1987

Part II

Environmental Protection Agency

40 CFR Part 252

Guideline for Re-refined Oil Content in Oil Procured by the Federal Government; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 252

[SWH-FRL 3080-5]

Guideline for Re-refined Oil Content in Oil Procured by the Federal Government

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing a guideline for Federal procurement of certain engine lubricating oils, hydraulic fluids, and gear oils containing re-refined oils. The guideline implements section 6002(e) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), which requires EPA to designate items which can be produced with recovered materials and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002. Once EPA has designated an item, section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase such items containing the highest percentage of recovered materials practicable.

The guideline designates engine lubricating oils, hydraulic fluids, and gear oils as products for which the procurement requirements of RCRA section 6002 apply. The guideline also contains recommendations for implementing these procurement requirements.

DATE: EPA will accept public comments on this proposed guideline until December 18, 1987.

ADDRESSES: The public must submit an original and two copies of their comments to: EPA RCRA Docket (S-212) (WH-562). 401 M Street SW., Washington, DC 20460. Place "Docket number F-87-RLOP-FFFFF" on your comments. Comments received by EPA may be inspected in Room MLG-100, U.S. EPA, 401 M Street SW., Washington, DC from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. A maximum of 50 pages of material may be copied from any regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, WH-563, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382-4502.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

This guideline is proposed under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Introduction

A Purpose and Scope

The Environmental Protection Agency (EPA) is proposing today one in a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a Federal, State, or local procuring agency uses appropriated Federal funds to purchase certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate these items and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (40 CFR Part 249). EPA proposed a second guideline, for paper and paper products containing recovered materials, on April 9, 1985 (50 FR 14076). EPA is in the process of finalizing this guideline. A third guideline, for asphalt materials containing ground tire rubber, was proposed on February 20, 1986 (51 FR 6202). Today's guideline covers engine lubricating oils, hydraulic fluids, and gear oils.

This preamble describes the requirements of section 6002, explains the basis for designating engine lubicating oils, hydraulic fluids, and gear oils as procurement items subject to section 6002, and discusses the provisions of the proposed guideline. It also provides information regarding the price, availability, and performance of re-refined oils.

B. Requirements of Section 6002

Section 6002 of RCRA, "Federal Procurement," directs all procuring agencies which use appropriated Federal funds to procure items composed of the highest percentage of recovered materials practicable, considering competition, availability, technical performance, and cost. Two factors trigger this requirement. First, EPA must designate items to which this requirement applies. Second, the requirement only applies when the purchase price of the item exceeds $10,000 or when the cost of such items purchased during the preceding year exceeded $10,000.

Federal agencies responsible for drafting or reviewing specifications for procurement items were required to review and revise them by May 8, 1986 in order to eliminate both exclusions of recovered materials and requirements that items be manufactured from virgin materials. In addition, when EPA designates a procurement item, procuring agencies must revise their specifications to require the use of

recovered materials in such items to the maximum extent possible without affecting the intended use of the item.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 added paragraph (i) to section 6002 of RCRA. This provision requires procuring agencies to develop an affirmative procurement program for procuring items designated by EPA. The program must contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

The program must be consistent with Federal procurement requirements.

Under section 6002(e), EPA is required to issue guidelines for use by procuring agencies in complying with the requirements of section 6002. The EPA guidelines must designate those items which can be produced with recovered materials and whose procurement by procuring agencies will fulfill the objectives of section 6002. They also must provide recommendations for procurement practices and information on availability, relative price, and performance.

Section 6002 is designed to promote materials conservation and thereby to reduce the quantity of materials in the solid waste stream. By using products containing recovered materials, Federal procurement can demonstrate their technical and economic viability.

C. Criteria for Selection of Procurement Items

In the preamble to the fly ash guideline, EPA established the following four criteria for the selection of procurement items for which guidelines will be prepared (48 FR 4231–4232, January 28, 1983):

(1) The waste material must constitute a significant solid waste management problem due either to volume, degree of hazard or difficulties in disposal;

(2) Economic methods of separation and recovery must exist;

(3) The material must have technically proven uses; and

(4) The Federal government's ability to affect purchasing or use of the final product or recovered material must be substantial.

These criteria incorporate all of the factors which section 6002(e) requires EPA to consider in designating items subject to the section 6002 procurement requirements.

Section 6002(e), as amended by section 501 of the Hazardous and Solid Waste Amendments of 1984, also required EPA to issue guidelines for three procurement items (by October 1, 1985). In order to expedite the promulgation of these guidelines, EPA considered two other factors in selecting items for guidelines: The ready availability of information on technical, economic, and institutional issues associated with the procurement item, and the existence of government or industry specifications allowing use of recovered materials in the item.

D. Background Information on Lubricating Oils

Lubricating oils are used to reduce friction and wear by interposing a film of material between rubbing surfaces. They are compounds of a refined oil or synthetic oil basestock and an additive package tailored to meet the requirements of the intended end use of the oils.

Lubricating oils have many applications. Automotive lubricating oils include engine oils, hydraulic fluids, and gear oils. Industrial lubricating oils include general lubricants, such as hydraulic, circulating, turbine, and gear oils; engine oils; metalworking oils, such as rolling, cutting, grinding, and quenching oils; and electrical rubber, spray, ink, and other process oils. Lubricating oils also are used in railroad, marine, and aviation engines.

Used lubricating oils contain contaminants picked up during use (e.g., lead, iron), as well as the components of the additive packages (e.g., metals, organics). Re-refining removes the contaminants and additives to produce a new basestock, thereby allowing the oil to be used repeatedly.

III. Rationale for Designating Re-Refined Oils

This section of the preamble demonstrates that re-refined oils satisfy EPA's criteria for designating items subject to the procurement requirements of RCRA section 6002.

A. Significant Solid Waste Disposal Problem

The first criterion is that the waste material constitutes a significant solid waste management problem.

Over 2 billion gallons of lubricating oils are sold in the United States annually. Approximately 1.2 billion gallons of used oil are generated, the rest being lost through engine combustion, leakage, and handling. Of this 1.2 billion gallons, 70 percent is recycled; the remaining 30 percent is discharged to land or to sewers. The predominant method of recycling used oil is to burn it as fuel. Other activities include re-refining to remove contaminants, application to land or water for weed or insect control, and use as a dust suppressant (e.g., road oiling).

Used oil frequently is contaminated with organic and inorganic toxics. Some of these substances, such as toxic metals, contaminate the oil during ordinary use in automobile engines. Other contaminants, such as solvents, result from incidental contamination or mixing of the used oil with hazardous wastes.

The organic and inorganic contaminants in used oil rarely are removed when the oil is processed to make fuel. The fuel is burned sometimes in non-industrial boilers, which typically are small and incapable of complete combustion of toxic materials. As a result, when used oil is burned as fuel, the toxic constituents are emitted to the environment. (See the discussion in EPA's regulation for burning and blending of used oil fuel, 50 FR 49191–49192, November 29, 1985.)

Various studies have concluded that unregulated land disposal or land application of used oils, discharging used oil threaten human health and the environment. These practices have led to contamination of land, surface water, and food chain crops with lead, phenols, and other contaminants. They also have affected the quality of drinking water.

In addition, when used oils are mixed with hazardous wastes or other hazardous substances prior to disposal or use as a dust suppressant or a fuel, toxic constituents are released to the environment. Recent examples are the dioxin contamination of Times Beach, Missouri and the PCB contamination of roads and horse arenas in Missouri.

Congress has determined that unregulated disposal and recycling of used oil is a threat to human health and the environment. The Used Oil Recycling Act of 1980 and the Hazardous and Solid Waste Amendments of 1984 require EPA to determine whether used oil should be listed as a hazardous waste. EPA also is required to issue regulations for recycling of used oil. EPA has issued final regulations (50 FR 49164, November 29, 1985) and proposed other regulations to implement this mandate. The Agency currently is considering a range of options to control used oil recycling adequately without imposing unwarranted adverse impacts on recycling and ultimate environmental detriment.

Under the proposed regulations, re-refiners would be subject to regulation as a recycled oil facility. The re-refined

oil products that they produce, however, would be classified as a product, not a hazardous waste, and would not be subject to the hazardous waste regulations. (See note 18, 51 FR 49218, November 29, 1985 and 40 CFR 261.3(c)(2)(i).)

The guideline proposed today complements the used oil regulatory program by encouraging re-refining, which EPA generally considers to be an acceptable, environmentally sound means of recycling used oil. (See 50 FR 1687.) Specifically, the proposed guideline is designed (1) to develop government demand for re-refined oils, (2) to encourage investment in additional re-refining capacity, (3) to create an alternate demand for the 100 million gallons of used oil potentially to be displaced by the used oil fuel restrictions, and (4) to increase use of re-refining technologies that generate little or no hazardous waste.

In sum, used oil presents a significant solid waste disposal problem. EPA is addressing this problem through a regulatory program designed to control used oil disposal and recycling activities and to channel used oil to facilities involved in environmentally sound recycling. This guideline is part of that effort.

B. Feasible Methods of Recovery

The second EPA criterion for selection of reclaimed materials for affirmative procurement under RCRA section 6002 is the existence of economic methods of separation and recovery.

Economically feasible methods exist to re-refine used oils to produce basestocks. The four major processes presently in use, available for use, or under development in the United States today are acid/clay, vacuum distillation/clay contacting, the Phillips re-refined oil process (PROP), and vacuum distillation/hydrofinishing. There also are several experimental processes being developed in the United States or in Europe.

1. Acid/Clay

Until the late 1970's, acid/clay treatment was the primary re-refining process used in the United States. Because it generates a large volume of hazardous waste and cannot easily remove many of the additives in the oil, it has been replaced by other technologies.

During acid/clay treatment, the used oil is screened/settled, dehydrated, treated with sulfuric acid, steam-stripped, and clay-contacted (i.e., filtered). The process yield ranges from 45 to 75 percent of the used oil feedstock. Wastes generated include acid sludge, spent clay, and corrosive condensates from the dehydration and steam stripping units.

2. *Vacuum Distillation/Clay Contacting*

Vacuum distillation recently replaced acid/clay treatment as a primary means of re-refining used oils in the United States. It has several advantages over acid/clay treatment, including easy removal of the additives and containments from the used oil, generation of little or no hazardous waste, and yields of 70 and 75 percent of the used oil feedstock as re-refined basestock. In addition, several product cuts can be taken from the distillation column, which allows the re-refiner to produce different lubricating oil basestocks. This process has three phases: Pretreatment, vacuum distillation, and clay contacting (i.e., filtering). It generates a spent clay solid waste. There are currently eight vacuum distillation/clay contacting re-refineries operating in the United States.

3. Phillips Re-refined Oil Process (PROP)

PROP consists of chemical, demetallization, clay/carbon contacting, hydrotreating, and flash stripping. The process yield ranges from 50 to 75 percent of the used oil feedstock. It generates solid wastes containing insoluble, bound metals, and some hazardous wastes. One re-refinery used PROP experimentally but is now closed.

4. Vacuum Distillation/Hydrofinishing

Vacuum distillation/hydrofinishing is the newest re-refining technology. Its processing steps include: Dehydration, 2-stage vacuum distillation, hydrogenation (treatment with pure hydrogen), and fractionation. The basestocks produced by this process are of premium quality, and yields approach 82 to 85 percent. No solid waste is generated from this process. Presently one vacuum distillation hydrofinishing facility is operational and two facilities which are under construction are scheduled for completion in 1986.

5. Experimental Processes

The Bartlesville Energy Research Center (BERC) of the Department of Energy has developed a solvent extraction-vacuum distillation process using a unique mixture of solvents. The BERC process is in the pilot plant stage.

The French Petroleum Institute is developing a process using ultrafiltration membranes. The process is based on the established practice of using ultrafiltration to recover spent industrial oils.

Supercritical fluid extraction, in which supercritical fluids (gases in a supercritical state) are used as solvents, has been used in a variety of industries to separate mixtures. For example, it has been used to separate caffeine from raw coffee beans. The Krupp Research Institute in Essen, West Germany has recovered usable oils from used oil in pilot plant tests of supercritical fluid extraction. The oils contained additives and required further treatment with acid/clay. However, the amount of acid and clay used was substantially less than the amount used in the traditional acid/clay process.

Two other processes, the Turbo pretreating process and the Selectopropane process, are in use commercially in Canada and Italy, respectively. The Turbo process is a proprietary pretreatment performed in a single vessel continuous reactor. Selectopropane uses propane as a solvent for treating used oil.

C. Technically Proven Uses

The third EPA criterion for selection of relcaimed materials for affirmative procurement under RCRA section 6002 is that the material has technically proven uses.

1. *Historic Uses of Re-refined Oils*

The American re-refining industry dates back to the early 1900's. At that time, re-refining was a relatively simple process of heating, settling, and separation by centrifugal force. The Armed Forces used re-refined oils for aircraft engines during both World Wars and thereafter. Commercial airlines began using it in 1932. However, the development of jet engines requiring more complex engine oils led to declining use of re-refined oils in aircraft.

At the same time as the aircraft market was declining, the automotive engine market was growing. By 1960, there were over 150 companies producing 300 million gallons of re-refined oils annually. As with the aircraft engines, the development of high performance automobile engines requiring complex lubricating oils created problems for re-refiners. The predominant re-refining technology was acid/clay, which was not very effective in removing many of the new, more sophisticated additives and other contaminants in the used oil. Economic and regulatory factors, combined with the technological problems caused by advances in additive technology, forced the industry into decline.

During the late 1970's and early 1980's, new re-refining technologies capable of economically and effectively removing the contaminants from used oil were

developed and put into use commercially. The majority of Amercian re-refiners use a modern technology, generally one of the vacuum distillation processes. However, re-refiners currently supply only 5 percent of the lubricating oils used in the U.S.

2. Equivalence of Re-refined Oils to Virgin Oil

The quality of lubricating oils is determined through a series of tests, called "engine sequence tests," in which the oils are placed in the test engines on laboratory dynamometer test stands. The tests are run in sequence with different loads, speeds, temperatures, etc. The oil must meet prescribed limits to be considered acceptable.

Oil performance also can be demonstrated through field testing. Automobile fleets containing the oil are driven under normal conditions. After a prescribed mileage is reached, the engines are taken apart and examined.

According to the National Bureau of Standards (NBS), there has been sufficient engine and field testing of re-refined engine oils to demonstrate that they can meet the prescribed test limits, are substantially equivalent to virgin oils, and for some parameters, perform better than virgin oils. NBS has found that there are measurable differences between virgin oils and some re-refined oils in some characteristics and some test results. These include levels of oxyacids, viscosity index improvers, chlorine, and additive/wear metals, as well as total acid number and saponification number. However, these differences do not have any apparent effects on engine performance.[1] The results of four field and engine tests are summarized below:

a. *San Diego Fleet Tests.* As part of a joint EPA/DOD research program, engines from the City of San Diego's fleet were taken apart and compared to those of another city's fleet. San Diego used re-refined oils for three years in its 1500-vehicle fleet. After 100,000 miles of service, six of the engines were examined and compared to two engines from the fleet of another city using virgin oils. No differences were found in the engines.

b. *Department of Defense Engine Sequence Tests.* The U.S. Army's Mobility Equipment Research and Development Command (MERADCOM), in co-ordination with EPA, tested six lubricating oils containing a re-refined oil basestock. The oils passed most of the engine sequence tests and one oil passed all of the tests. Based on these results, MERADCOM revised its specification for administrative engine oils (MIL–L–46152) to allow the use of re-refined oils.

c. *RCMP Fleet Tests.* The Royal Canadian Mounted Police tested eight vehicles under normal fleet operating conditions. Four vehicles used virgin oils and four used re-refined oils. Upon examination, all eight engines showed normal wear and deposits. There were no oil-related problems.

d. *BERC Engine Sequence Tests.* The Department of Energy's Bartlesville Energy Research Center (BERC) conducted engine sequence tests of three re-refined oils. Two of the oils were produced by BERC's experimental re-refining process, while the third was obtained from a commercial re-refinery. The commercial oil passed all engine sequence tests. The BERC oils failed one of the tests; however, after adding more corrosion inhibitors to one of these oils, it passed the test. As with the DOD tests, the BERC tests demonstrate that re-refined oils are capable of passing engine sequence tests.

3. Foreign Use of Re-refined Oils

Foreign users of re-refined oils include Canada, Great Britain, West Germany, France, Italy, New Zealand, South Africa, Israel, Pakistan, and India. In these countries, re-refiners process 20 to 60 percent of the available used oil, compared to 5 percent in the United States.

4. Military Specifications

Military specifications for lubricating oils are used by the Federal government and by State and local governments for procurement purposes. Until recently, these specifications prohibited the use of re-refined oils. DOD has begun to remove the prohibitions as engine sequence tests demonstrate that re-refined oils can meet the specifications. To date, DOD has revised the specifications for administrative vehicle engine lubricating oils (MIL–L–46152), tactical/combat vehicle engine lubricating oils (MIL–L–2104), Arctic engine oils (MIL–L–46167), and gear lubricants (MIL–L–2105). In addition, the existing specifications for hydraulic fluids (MIL–H–5606 and MIL–H–6083) contain no exclusions of re-refined oils.

5. NBS Provisional Tests

One impediment to use of re-refined oils by Federal procuring agencies has been the buyers' uncertainty that the re-refined oil supplied will perform in the same manner as the re-refined oil that was qualified for the Federal Qualified Products List (QPL). Whereas virgin oil is refined from batches of crude oil originating from the same oil field, the used oil used to make batches of re-refined oil may originate from different sources. The re-refined oil batches therefore may differ. To remove this uncertainty, the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6201 *et seq.*, required the National Bureau of Standards (NBS) to develop test procedures for determining the substantial equivalence of re-refined and virgin oils. The purpose of the tests is to assure the consistency of the re-refined oil basestock (i.e., the used oil) during the four-year time period between engine sequence tests.

NBS has proposed a testing regime similar to that required by the military specifications. First, the re-refined oil would be qualified through engine sequence testing and characterization testing. A set of limits would be established for each parameter tested. Then, annually, production samples would be tested for consistency with these limits. The test methods proposed by NBS consist of standard test methods and modified versions of standard test methods that NBS determined to be appropriate for use with re-refined oils.

D. Federal Purchasing Power

The fourth EPA criterion for selection of a procurement item for affirmative procurement under RCRA section 6002 is that the Federal government's ability to affect purchasing or use of the item, when it contains recovered materials, be substantial.

Although Federal procurement of engine lubricating oils, hydraulic fluids, and gear oils is not substantial, representing less than 2 percent of annual domestic purchases, EPA expects Federal procurement of re-refined oils to have a substantial impact on their use through a "ripple" effect.

The Federal government purchases items listed on the Qualified Products List (QPL). In the case of lubricating oils, a supplier must demonstrate that the product meets the applicable military specification (Mil-Spec) before it will be included on the QPL. Since many State and local procuring agencies, as well as the private sector, make use of Mil-Specs and the QPL when purchasing products, qualification of re-refined oil products should also open these markets to re-refiners.

Federal procurement of re-refined oils also should encourage investment in new capacity. The wariness of lending institutions towards re-refiners should decrease due to improved profitability of existing re-refineries and

[1] National Bureau of Standards, U.S. Department of Commerce, *Measurements and Standards for Recycled Oil—IV*, NBS Special Publication 674, July 1984, pg. 309.

demonstrated demand for re-refined oils.

E. Other Considerations

Two other EPA criteria for designation of procurement items under RCRA Section 6002 are the availability of background studies and existence of government or industry specifications allowing use of recovered materials in the item.

1. Availability of Used Oil Studies

EPA, the Department of Energy, the Department of Defense, the National Bureau of Standards, and others have extensively studied the technical, environmental, economic, energy, and institutional issues associated with re-refining used oils. These studies and other publications were used in developing this guideline.

2. Specifications

As discussed above, engine lubricating oils, hydraulic fluids, and gear oils cannot be purchased by the Federal government unless they are listed on the Qualified Products List. Lubricating oils cannot be listed until the vendor demonstrates that they meet the applicable military specifications (Mil-Specs). Thus, if specifications either do not exist or justifiably exclude re-refined oils, Federal procuring agencies cannot be required to procure lubricating oils containing re-refined oils.

The Mil-Specs used by the Federal government when procuring engine lubricating oils and gear oils have been revised to allow use of re-refined oils. Other Mil-Specs (e.g., hydraulic fluids) neither specifically include nor exclude re-refined oils. Therefore, these existing specifications will promote prompt implementation of this guideline.

IV. Proposed Guideline

This portion of the preamble explains each section of the proposed guideline.

A. Purpose

The purpose of this guideline is to (1) designate engine lubricating oils, hydraulic fluids, and gear oils meeting certain military specifications as items subject to the procurement requirements of section 6002 of RCRA; and (2) recommend procedures for complying with section 6002.

B. Scope

This guideline applies to engine lubricating oils, hydraulic fluids, and gear oils (hereafter referred to as "designated oils"). These oils were chosen primarily because the Department of Defense, which establishes Federal government specifications for petroleum products, already has revised its specifications for these oils to eliminate restrictions against the use of re-refined oils. In addition, these items represent large components of the annual Federal procurement of lubricating oils, so purchases of these items will generally be in excess of the $10,000 threshold set by section 6002. (The $10,000 threshold is discussed below.) Most of these oils are commonly used by State and local agencies and by the private sector. EPA expects this guideline to encourage these groups to procure the designated oils.

The guideline does not apply to marine oils and aviation oils. Insufficient technical studies are available at this time on which to base a guideline for procurement of these items. EPA will consider issuing a procurement guideline for them in the future as more information becomes available.

C. Applicability

The requirements of section 6002 apply, for the most part, to "procuring agencies," which is defined by RCRA as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." The procurement requirements apply to any purchase by a procuring agency of an item costing $10,000 or more or when the procuring agency purchased $10,000 worth of the item or of a functionally equivalent item during the preceding fiscal year.

1. Procuring Agency

This guideline applies to purchases made directly by a procuring agency or by a government contractor for use in government vehicles, machinery, or equipment. Direct purchases by a contractor would include purchases for maintaining a government fleet [2] and purchases for use in new equipment to be supplied by the contractor (e.g., a new weapons system).

The Department of Defense, through the Defense Logistics Agency, purchases petroleum products on behalf of all Federal agencies, including the General Services Administration and the Postal Service. Thus, this guideline applies primarily to DOD and its contractors.

The definition of "procuring agency" in RCRA makes it clear that the requirements of section 6002 apply to "indirect purchases," i.e., purchases by a State or local agency, using appropriated Federal funds (grants or construction funds). To the best of its knowledge, EPA does not believe that indirect purchases of the designated oils occur. EPA solicits comments on this conclusion.

2. The $10,000 Threshold

The procurement requirements of section 6002 apply to purchases of $10,000 or more. Since today's proposed guideline applies to three broad product categories—engine lubricating oils, hydraulic fluids, and gear oils—several questions are raised as to when the $10,000 threshold is reached.

One possible interpretation is that purchases of various categories of lubricating oils totaling $10,000 trigger the section 6002 requirements. Under this interpretation, a purchase of $6,000 worth of engine lubricating oils, $3,000 worth of hydraulic fluids, and $1,000 worth of gear oils would trigger the requirement. EPA rejects this interpretation as being unduly burdensome on both procuring agencies and suppliers. It would require the agencies to examine every small procurement to determine whether the section 6002 requirements apply, and it might require suppliers to provide re-refined oils in non-economical quantities.

Instead, EPA is proposing that the section 6002 requirements be triggered only when $10,000 worth of any one of the three broad product categories (i.e., engine lubricating oils, hydraulic fluids, or gear oils) is purchased. Under this interpretation, a purchase of $10,000 worth of engine lubricating oils and $3,000 worth of hydraulic fluids would trigger the section 6002 requirements for the engine lubricating oils but not for the hydraulic fluids.

In calculating whether the $10,000 threshold has been reached, EPA intends that procuring agencies consider all specifications of a product within each of the three broad categories to be "functionally equivalent" to one another for purposes of this guideline. For example, hydraulic fluid meeting Mil-Specs MIL–H–5606 and MIL–H–6083 would be considered to be "functionally equivalent" even though, strictly speaking, they are not functionally equivalent in a technical sense because MIL–H–6083 requires additional corrosion resistance. EPA believes that restricting the applicability of section 6002 to purchases based on a very

[2] The term "government fleet" does not refer to vehicles owned by the contractor but rather to vehicles owned by a government agency and operated or maintained on behalf of the agency by the contractor.

technical definition of functional equivalency would limit the effectiveness of the guideline in meeting the objectives of RCRA. EPA recommended a similar approach in the proposed paper guideline. (See 50 FR 14078, April 9, 1985.)

D. Definitions

Most of the definitions used in this procurement guideline are the same as used in RCRA itself.

For purposes of this guideline, the terms engine lubricating oils, gear oils, and hydraulic fluids refer to petroleum-based oils. These terms include synthetic oils derived from petroleum.

Section 6002(c) requires procuring agencies to procure items composed of the highest percentage of recovered materials *practicable* and section 6002(i) requires procuring agencies to develop programs to assure that recovered materials are purchased to the maximum extent *practicable* (emphasis added). Commenters on EPA's proposed paper guidelines asked EPA to define the term "practicable" as used in section 6002. In response, EPA intends to define "practicable" in the final paper guideline and is including the definition in this proposed re-refined oil guideline as well.

EPA's definition of "practicable" combines the dictionary definition with certain statutory criteria for determining practicability. The dictionary definition of practicable is "capable of being used," and EPA believes that Congress intended the term to be defined in this way. Congress also provided four criteria for determining the maximum amount practicable: (1) Performance in accordance with applicable specifications; (2) availability at a reasonable price; (3) availability within a reasonable period of time; and (4) maintenance of a satisfactory level of competition. EPA's definition of practicable incorporates these criteria.

E. Requirements vs. Recommendations

RCRA section 6002 requires procuring agencies and contracting officers to perform activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" section 6002. EPA has incorporated the section 6002 requirements into the proposed guideline for the benefit of procuring agencies. As a result, the guideline contains two types of provisions: Requirements (mandated by Congress in section 6002) and recommendations (EPA's guidance for complying with the requirements of section 6002). As used in the guideline, the verbs "shall" and "must" indicate section 6002 requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations for complying with those requirements.

Procuring agencies must comply with the requirements of section 6002, whereas EPA's recommendations are only advisory in nature. Procuring agencies may choose to use other approaches which satisfy the section 6002 requirements. However, EPA believes that if a procuring agency chooses to follow EPA's recommendations, that agency will be in compliance with the section 6002 requirements.

F. Specifications

Subpart B of the guideline, Specifications, contains two sections, Recommendations and Revisions.

1. Recommendations

The Department of Defense has undertaken an active program to revise its lubricating oil specifications to eliminate discrimination against re-refined oils. The program includes detailed testing of re-refined oils to determine their ability to meet existing military specifications. To date, DOD has revised four engine lubricating oil specifications and its multipurpose gear oil specification to permit use of re-refined oils. (In addition, the hydraulic fluids specifications neither exclude re-refined oils nor require virgin materials.)

EPA is recommending that procuring agencies use these specifications when purchasing the designated oils. Copies of the specifications may be obtained from: Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120.

2. Revisions

RCRA section 6002(d) contains two requirements for revising specifications for procurement items. First, Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications by May 8, 1986 to eliminate exclusions of recovered materials and requirements that items be manufactured from virgin materials (section 6002(d)(1)). This requirement applies, in the case of lubricating oils, to the Department of Defense. EPA knows of no other Federal agency that drafts or reviews lubricating oil specifications.

Second, within one year after the date of publication of a guideline as a final rule, Federal agencies must assure that their specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item (section 6002(d)(2)). EPA believes that this second requirement is more extensive than the first requirement. Simply eliminating discriminatory provisions, as required by section 6002(d)(1), is not sufficient to meet all the obligations of section 6002(d). EPA believes, however, that compliance with the affirmative procurement requirements of section 6002(i) fulfills the section 6002(d)(2) requirements because an affirmative procurement program should result in procurement to the maximum extent practicable.

EPA believes that the second specification revision requirement also applies to non-Federal procuring agencies which procure lubricating oils with appropriated Federal funds. Unless their specifications are revised to allow the use of re-refined lubricating oils, these agencies will be unable to implement the affirmative procurement requirements of RCRA section 6002 (c)(1) and (i). For this reason, § 252.11(b) of the proposed guideline provides that all *procuring agencies* (rather than "Federal agencies" as provided in the Act) must assure that their specifications for engine lubricating oils, hydraulic fluids, and gear oils require the use of re-refined oils to the maximum extent possible without jeopardizing the intended end use of these items. Section 252.10 recommends that procuring agencies use the DOD specifications as a guide.

G. Affirmative Procurement Program

RCRA section 6002(i) requires procuring agencies to adopt an affirmative procurement program to ensure that lubricating oils containing re-refined oils are purchased to the maximum extent practicable. The program must contain four elements: (1) A preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification; and (4) procedures for annual review and monitoring of the program's effectiveness. The program must be established within one year of the date of publication of this guideline as a final rule.

1. Recovered Materials Preference Program

Under section 6002(i), procuring agencies have three options for implementing the preference program. They can employ a case-by-case approach, adopt minimum content standards, or choose a "substantially equivalent" alternative. The proposed guideline recommends that procuring

agencies adopt minimum content standards.

EPA believes that this approach will increase use of re-refined oil in lubricating oils, thereby promoting growth of the re-refining industry and reducing the amount of used oils in the solid waste stream. EPA notes that this approach is *recommended*, not required. Procuring agencies may adopt other types of affirmative procurement programs, such as case-by-case procurement of the designated oils or a substantially equivalent approach. EPA requests comments on the appropriateness of this approach to re-refined oils procurement.

The following sections provide a detailed discussion of the basis for the minimum content standard, including legal and technical considerations.

a. *Background.* As discussed in the "Technically Proven Uses" section of this preamble, the re-refining industry has declined during the last twenty years due to technical, regulatory, and economic factors. The technical and regulatory hurdles essentially have been overcome. New re-refining technologies capable of removing the complex additives and contaminants in used oil have been developed and are in use commercially; prejudicial regulatory requirements providing for labeling of re-refined oil as "made from previously used oil" have been eliminated; and a 6 cents per gallon Federal excise tax no longer applies to re-refined oil. However, the economic hurdles remain. EPA believes that the proposed guideline will assist the industry to overcome some of the economic hurdles without providing subsidies.

One of the economic hurdles to be overcome is the high cost of qualifying an engine lubricating oil to meet a military specification. In order to be qualified, the oil must pass a series of lubricant performance tests, which measure such characteristics as rust, engine sludge, engine varnish, clogging, ring and lifter sticking, and cam wear. Typically, the cost of lubricant performance testing begins at 30,000 for a series of four tests. The oil may fail one or more portions of one or more tests. When that occurs, the additives in the oil are adjusted, and the tests are run again. Thus, the cost of qualifying an oil can be greater than $100,000.

There has not been sufficient incentive for the re-refiners to incur this cost. Changing the Mil-Specs to allow use of re-refined oils has not provided the incentive. Since the revised military specifications have been in place, three re-refiners have qualified their oil, yet there have been no sales of re-refined oil to the Federal government. The re-refiners have not bid because the Federal procurements did not include enough volume in the re-refiners' local markets to warrant bidding. This fact, combined with the memory of past discrimination on the part of the Federal government against procurement of re-refined oils, has tended to discourage re-refiners from investing in the high cost of qualifying their product without assurance of future sales to offset the costs.

Another economic hurdle is the difficulty in obtaining capital for plant expansion, modernization, and construction. The revisions to the military specifications to permit use of re-refined oils, coupled with affirmative procurement, will demonstrate that there is a steady demand for this product. EPA believes that the ability of re-refiners to obtain capital will be increased as a result.

b. *Alternatives considered.* In addition to minimum content standards, EPA considered four other approaches for a preference program. Those approaches are case-by-case procurement, price preferences, set-asides, and closed loop contracts.

The case-by-case approach was recommended by EPA in the fly ash procurement guideline and in the proposed paper procurement guideline. Under this approach, bids would be solicited for all types of oils, including those containing re-refined oils. The contact would be awarded to the lowest responsible bidder. In the case of identical low bids, preference would be granted to the vendor selling the lubricating oil with the highest percentage of re-refined oils.

The Department of Defense currently uses normal procurement procedures for procuring oils; contracts are awarded to the lowest-priced, responsible bidders, and there is no preference for re-refined oil in the case of a tie bid. Since, as discussed above, DOD's procurement approach has not resulted in procurement of lubricating oils containing re-refined oil, EPA believes that the use of the case-by-case approach, which only adds a preference for re-refined oil in case of a tie bid, will not result in procurement of re-refined oil.

Federal price preferences or set-asides, such as small business, minority business, and labor surplus area programs, have been established under explicit statutory authority or a specific Executive Order. Since RCRA section 6002 does not provide such explicit authority, EPA believes that Congress did not contemplate the adoption of either price preferences or set-asides to fulfill the objectives of section 6002. This issue is discussed further in section IV.G.1.c of this preamble.

Under a closed-loop contract, a re-refiner would process the used oil generated by the government and return it for re-use. A variation on this arrangement is the quasi-closed loop contract, in which a re-refiner would accept a batch of used oil and deliver a like quantity of re-refined oil produced from used oil in inventory. The oil in inventory would not necessarily be government used oil. Re-refiners use both types of arrangements with commercial customers.

A 1983 DOD study concluded that the quasi-closed loop arrangement is feasible, although participation by low-volume oil users would not be cost-effective for DOD.[3] The study recommended a closer look at the quasi-closed loop arrangement to determine the minimum volume of oil use for which it would be appropriate. Because more information is necessary, EPA is not recommending it at this time. EPA believes, however, that a closed-loop or quasi-closed loop arrangement may be an appropriate method for procuring agencies to use.

c. *Legal considerations.* RCRA section 6002(i)(1) requires that affirmative procurement programs be "consistent with applicable Federal procurement law." EPA was concerned that minimum content standards might violate the Competition in Contracting Act of 1984 (CICA) (10 U.S.C. Chapter 137) and the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1). Both provide that specifications restricting what can be offered by bidders are legally permissible only to the extent that they reflect the Government's minimum needs or are authorized by law. (CICA section 2711(a)(1), 48 CFR 10.002(a)(3)(ii).). EPA has concluded that RCRA section 6002 provides the necessary authorization. Section 6002(i)(3)(B) expressly permits agencies to establish specifications which restrict bids to those which meet a minimum content standard. Therefore, minimum content standards are not in violation of general Federal procurement law.

CICA requires agencies to use full and open competitive procedures when procuring property and services. The term "full and open competition" means that all responsible sources must be permitted to submit a bid. In the case of a procurement against a restrictive specification, such as a minimum

[3] Construction Engineering Research Laboratory, U.S. Army Corps of Engineers. *Feasibility of Department of Defense Used Lubricating Oil Re-refining*, December 1983.

content standard, "full and open competition" means that all responsible sources who can meet the specification can bid. The preference program recommendation in the proposed guideline is consistent with this requirement, since any vendor of oil can submit a bid as long as the product offered contains the minimum re-refined oil content.

d. *The minimum content recommendations.* The current capacity of existing re-refineries exceeds government lubricating oil needs. Thus, in theory, procuring agencies could purchase 100 percent of their annual needs from re-refiners. In actuality, there are many factors that will affect the price and availability of re-refined oils. These include the purchase price of used oil, the availability of a constant feedstock for the re-refining process, costs associated with transporting the oils to geographically distant users, costs associated with qualifying the re-refined oil, and requirements that might arise in the future (such as costs of complying with EPA's proposed regulations for used oil). EPA found relatively little data with which to quantify these factors. In fact, the 1983 DOD study (described above) concluded that local factors, which could not be generalized, would be determinative.

The Federal government annually purchases over 7 million gallons of vehicular lubricating oils (Mil-Specs MIL–L–46152 and MIL–L–2104), 800,000 gallons of gear oil (Mil-Specs MIL–L–2105), and 700,000 gallons of hydraulic fluid (Mil-Specs MIL–H–5606 and MIL–H–6083). Re-refiners have indicated to DOD that they would enter into closed-loop contracts if a minimum of 100,000 gallons per year were purchased. A minimum content standard as low as 5 percent re-refined oils would result in purchases of 425,000 gallons annually. Thus, EPA believes that minimum content standards should provide an incentive to the re-refining industry to qualify and bid their product.

RCRA provides four criteria for establishing a minimum content standard. Section 6002(i)(3)(B) provides that the minimum content required by a specification must be the maximum available without jeopardizing the intended end use of the item or violating the limitations of section 6002(c)(1)(A) through (C). Thus, the four criteria are (1) the intended end use of the item, (2) availability, (3) technical performance, and (4) price.

For the items designated by this guideline, the first criterion will be satisfied by any content level. DOD already has determined that re-refined oils will not jeopardize the intended end use of the oils designated by this guideline; the specifications for these items either specifically allow the use of re-refined oils or do not prohibit it. Similarly, the third criterion will be satisfied by any content level because the performance testing required to qualify oils for the QPL assures that the oils will meet the specifications. Thus, the availability and price criteria will be the key determinants of the minimum content standard.

EPA is proposing two alternative approaches to setting a minimum content standard. Under the first alternative, EPA would recommend that procuring agencies use minimum content standards but leave it up to procuring agencies to set a level that both satisfies the statutory criteria and meets their needs. Under the second alternative, EPA would recommend that procuring agencies set a minimum re-refined oil content standard of at least 25 percent. EPA requests comments on both alternatives; in particular, comments are requested on two issues: (1) Whether EPA guidelines should recommend specific minimum content levels and (2) is so, what level(s) should be recommended in the proposed guideline.

EPA considered three minimum re-refined oil content levels: 100 percent, 25 percent, and 5 percent. These standards are discussed below. The first alternative (i.e., no specific level recommended in the guideline) is also discussed below.

(1) *One Hundred Percent Standard.* While a minimum content standard of 100 percent meets the "maximum available without jeopardizing the intended end use of the item" and "performance" criteria, EPA believes that it might not meet the availability and price criteria. The small number of re-refiners (less than 20) and their geographic distribution relative to the location of the procuring agencies might result in their inability to supply the needs of the procuring agencies or to supply their oil at a reasonable price. EPA also is concerned that many vendors currently on the QPL will withdraw because they do not now sell re-refined oil and would be unwilling to incur the expense of obtaining re-refined oil for re-sale to procuring agencies because the total quantity of oil sold to procuring agencies is small compared to the total quantity sold to all customers.

Under this alternative, there would be no sales of re-refined oil to procuring agencies unless the vendor could supply qualified, 100 percent re-refined oil to all required locations at a reasonable price. Since EPA believes that this probably cannot be done, it is not recommending this alternative.

(2) *Twenty-five Percent Standard.* One alternative set out in the proposed guideline recommends that procuring agencies set their minimum content standard at the highest level of re-refined oil that they determine meets the statutory criteria (i.e., performance, availability, and price) but at least at 25 percent. Under this approach, if a procuring agency determines that more than 25 percent re-refined oil is available at a reasonable price, then the agency should establish a higher minimum content standard. Otherwise, the agency should use 25 percent.

As with the 100 percent level, a 25 percent level can be achieved with existing re-refining capacity. In addition, a 25 percent level has several advantages over 100 percent. First, blending of re-refined oil and virgin oil is a common industry practice, and blends containing 25 percent re-refined oil are common. Second, blends of virgin and re-refined oil can be sold to procuring agencies by re-refinders, compounders (i.e., blenders), or virgin oil vendors. This larger number of vendors should be able to supply the procuring agencies' needs at a reasonable price. Third, vendors of virgin oil currently on the Qualified Products List may be willing to continue supplying oil since the blends will still be 75 percent virgin oil. Fourth, although these oils must be requalified due to the addition of re-refined oil, industry spokespeople have suggested that the re-refiners and/or the additive manufacturers may be willing to bear some or all of the cost of requalification. Finally, EPA recognizes that it is important to the Department of Defense, for national security reasons, that there be a large number of vendors on the Qualified Products List. Thus, a level that encourages existing vendors to *stay* in the government market is necessary.

(3) *Five Percent Standard.* Unlike the 100 percent and 25 percent standards, a 5 percent standard may require considerably less than a complete requalification of all oils currently qualified. For example, the Department of Defense has indicated that because the quantity of re-refined oil is *de minimus*, it may be possible to test two or three oils and to extrapolate the results to a group of similar oils, rather than completely requalifying all of the oils. As a result, the cost of qualifying oils containing re-refined oil would be considerably less. Thus, the 5 percent standard is a compromise between EPA's desire to promote used oil re-refining and the cost of qualifying re-refined oils. However, a 5 percent standard is far from the "maximum

available" and EPA believes that it will not result in sales of very much re-refined oil to the government market. Therefore, it is not proposing this level.

(4) *Procuring Agencies Determine the Standard.* EPA also is proposing an alternative—i.e., that each procuring agency set the minimum content standard that it will use. The standard must both satisfy the statutory criteria and meet their needs. This approach would allow the procuring agencies to determine the maximum amount of re-refined oil that is both available to them and available at a reasonable price. As mentioned above, EPA requests comments on this approach.

e. *Limitations Set by RCRA.* As mentioned above, the minimum content standard would be subject to the four limitations provided in RCRA section 6002, namely, reasonable availability, reasonable price, ability to meet the specifications, and maintenance of competition. For example, if a procuring agency determines that it cannot obtain a designated oil containing the minimum amount of re-refined oil or that it cannot obtain the oil at a reasonable price, then the procuring agency can suspend the minimum content standard.

One objection to a minimum re-refined oil content standard is that the virgin oil suppliers will not bid because they will not want to requalify their oils. This is an availability issue. If procuring agencies find that the designated oils with the specified minimum re-refined oil content are unavailable, then they are not required to solicit bids for that specification. Instead, they may solicit bids for virgin oil.

A related objection is that re-refiners cannot supply procuring agencies with all grades of the designated oils. Again, this is an availability issue. If prospective bidders have not qualified their oils or have not qualified them for all grades of the designated oils, then procuring agencies are not required to solicit bids for re-refined oils for those grades.

Similarly, if there will not be adequate price competition,[4] procuring agencies are not required to solicit bids for the minimum content specification.

f. *Procurement Procedures.* Procuring agencies should examine their procedures and eliminate any procurement practice that discriminates against re-refined oils. For example, if a procuring agency invites bids to supply a broad range of lubricating oils on an "all or none" basis, while re-refiners are qualified to supply only a limited range of items, then re-refiners will not be able to bid on the contract. EPA leaves it to the discretion of procuring agencies to determine the best means of eliminating this form of discrimination.

2. *Promotion Program.* The second requirement of the affirmative procurement program is a promotional effort by procuring agencies. The proposed guideline recommends several methods for procuring agencies to use for disseminating information about their preference programs, such as placing statements in invitations to bid, discussing the program at bidders' conferences, and informing industry trade associations about the program.

3. *Estimates, Certification, and Verification.* The third requirement of the affirmative procurement program set forth in section 6002(i) concerns estimates, certification, and verification. Many questions have been raised about the certification and estimation of recovered materials content, such as when they should be provided, who is to provide them, how the information is to be obtained, and how it is to be verified. To clarify this subject, it is necessary to review the requirements of the law.

RCRA sections 6002(c)(3)(B) and 6002(i)(2)(C) require that after the effective date of the proposed guideline, contracting officers must require vendors who supply Federal procuring agencies with items covered by the guideline to provide an *estimate* of the total percentage of recovered materials contained in the items. EPA believes that this requirement is for the purpose of gathering statistical information on price, recovered materials content, and availability, and applies regardless of whether the procurement solicitation specifies that recovered materials can or must be used. EPA is recommending that procuring agencies retain these data for three years.

When solicitations or invitations for bid specify a minimum content of recovered materials, the vendors must *certify* that their product meets the minimum. This requirement is found in RCRA sections 6002(c)(3)(A) and 6002(i)(2)(C). The former provision is for "the percentage of recovered materials *to be used* in the performance of the contract" [emphasis added] and appears to apply to offerors or bidders. The latter provision is for "minimum recovered material *utilized* in the performance of a contract" [emphasis added] and appears to apply to suppliers.

EPA recommends that procuring agencies meet the certification requirement in RCRA section 6002(c)(3)(A) by inserting in the solicitation or invitation for bid a certification provision such as the Recovered Material Certification contained in the Federal Acquisition Regulation (FAR), 48 CFR 52.223–4. (EPA notes that under the FAR, Federal procuring agencies must use this clause; non-Federal procuring agencies may use it or a similar certification.) Procuring agencies can meet the certification requirement in RCRA section 6002(i)(2)(C) by requiring vendors to submit a certification that the oils supplied contain the minimum re-refined oil content specified in the contract. Note that there is no requirement to certify the actual re-refined oil content, but rather that the re-refined oils content actually used meets the contract minimum.

Section 6002(i) also requires procuring agencies to establish reasonable procedures to verify the estimates and certification. It is not possible to verify re-refined oil content by chemical analysis. Since analytical verification of re-refined oil content is not possible, EPA recommends that procuring agencies simply modify their existing quality assurance procedures, as developed under Part 46 of the Federal Acquisition Regulation, to include verification of estimates.

4. *Review and Monitoring.* The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program. The review should include an estimate of the quantity of re-refined oils purchased during the year, an assessment of the effectiveness of the agency promotion program, and an assessment of any remaining barriers to procurement of re-refined oils. In assessing barriers to procurement, procuring agencies should determine whether they are internal or external. Internal barriers, such as resistance to use of re-refined oils by agency personnel, without cause, can be corrected by the procuring agencies. External barriers, such as unavailability of re-refined oils, may well be beyond the agencies' control.

V. Price, Competition, Availability, and Performance

As described above, section 6002(c)(1) of RCRA provides that a procuring agency may decide not to purchase an item designated by EPA if it determines that the item is available only at an unreasonable price, a satisfactory level of competition cannot be maintained,

[4] Under 48 CFR 15.804–3(b), competition exists if offers are solicited; two or more responsible offerors that can satisfy the Government's requirements submit price offers responsive to the solicitation's expressed requirements; and these offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

the item is not reasonably available within a reasonable period of time, or the item fails to meet the performance standards. EPA has considered the effect of these limitations on re-refined oil procurement and made the following determinations.

A. Price

Several factors will affect the market price, or bid price, of the designated oils, including the availability and cost of used oil feedstock, transportation costs, qualification costs, excess re-refining capacity, and the yield of oil from the re-refining process. Since these factors are site-specific and variable, EPA believes that the best method of determining price is through the marketplace.

Section 6002 provides that a procuring agency can decide not to purchase re-refined oils if the price is "unreasonable." The determination of reasonableness must be made in accordance with federal procurement law (e.g., the Federal Acquisition Regulation.)

As has been discussed, the factors which have resulted in the Federal government not purchasing oil are not connected with the price of re-refined oil. Indeed, re-refined oil typically sells for 10 to 15 percent less than equivalent virgin oil. EPA does not expect that an affirmative procurement program will result in the government paying a higher price for its oil; in fact, representatives of the re-refining industry claim that affirmative procurement will lower the price.

EPA therefore is recommending that procuring agencies interpret the reasonable price provision of RCRA section 6002(c)(1)(C) to mean that, for re-refined oil, a reasonable price is little or no increase over the price of virgin oil.

B. Competition

As with price, determination of "satisfactory" competition must be made in accordance with federal procurement law.

EPA believes that there will be a satisfactory level of competition for contracts to supply re-refined oils. There currently is excess capacity in the re-refining industy available to supply the procuring agencies' needs. At least four re-refiners have indicated to EPA their intent to qualify their oils to meet the military specifications after this guideline is published as a final rule. EPA believes that other re-refiners will follow their lead once procuring agencies begin to purchase re-refined oils.

C. Availability

Given the excess capacity in the re-refining industry, EPA believes that re-refined oils will be available for purchase by procuring agencies.

D. Performance

As discussed elsewhere in this preamble, the Federal government only purchases petroleum products that have been qualified for inclusion in the Qualified Products List (QPL). A product is not included in the QPL until it successfully meets all qualification tests identified in the applicable military specification. For this reason, once a re-refined oil is included in the QPL, performance will not be a reason for procuring agencies to decline to purchase it.

VI. Implementation

Different parts of section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1986., (i.e., 18 months after enactment of HSWA), (2) one year after the date of publication of an EPA guideline, and (3) the date specified in an EPA guideline. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the preamble explains these requirements.

First, under section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items were to eliminate from such specifiations any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was to be completed by May 8, 1986.

Second, procuring agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item (section 6002(d)(2)). In addition, procuring agencies must develop an affirmative procurement program for purchasing designated items, in this instance, engine lubricating oils, hydraulic fluids, and gear oils containing re-refined oils (section 6002(i)(1)). Both of these activities must be completed within one year after the date of publication of this guideline as a final rule.

Third, procuring agencies which procure items designated by EPA must procure such items containing the highest percentage of recovered materials practicable (section 6002(c)(1)). In addition, contracting officers must require vendors to submit estimates and certifications of recovered material content (section 6002(c)(3)). Both of these activities must begin after the date specified by EPA in the applicable guideline.

EPA believes that procuring agencies should begin to procure the designated oils as soon as the specification revisions have been completed and the affirmative procurement have been developed. Since these latter activities must be completed within one year after publication of this guideline as a final rule, affirmative procurement should begin one year from that date as well. Section 252.26 specifies this implementation date.

EPA expects cooperation from affected procuring agencies in implementing this guideline. Under section 6002(g) of RCRA, the Office of Federal Procurment Policy (OFPP), in cooperation with EPA, is responsible for overseeing implementation of the requirements of section 6002 and for coordinating it with other Federal procurement policies. OFPP is required to report to Congress on actions taken by Federal agencies to implement section 6002.

VII. Supporting Analyses

Existing EPA, Department of Energy, Department of Defense, and National Bureau of Standards studies on the technical, economic, environmental, and institutional impacts of using re-refined oils were used as background documents for the proposed guideline. In addition, EPA prepared an assessment of the impacts of the proposed guideline, "Environmental, Economic, and Energy Impacts of Proposed 'Guideline for Federal Procurement of Re-refined Lubricating Oils.' " The bibliography to this document identifies the other EPA, DOE, DOD, and NBS studies.

A. Environmental Impacts

EPA expects the proposed guideline to have a net positive impact on the environment by promoting recovery and re-use of used oil. Used oil that currently is applied to land or water for dust suppression or weed and pest control, dumped into sewers, or disposed in landfills will be diverted to re-refining.

Re-refineries generate solid and hazardous wastes in the form of distillation bottoms, sludges, and contaminated clays. The quantity of waste depends on the type of re-refining process used and, in any event, is less than the quantity of used oil that would require disposal in the absence of re-refining. Some of these wastes are sold as products (e.g., distillation bottoms),

potentially could be used as fuels (e.g., oily sludges), or potentially could be used as road bases after minimal treatment (e.g., clays). Therefore, these wastes would have minimal environmental impact. Other wastes must be disposed of as hazardous wastes (if they meet the definition of hazardous waste). Re-refining also generates oily wastewater, which must be treated prior to discharge or re-use.

B. Energy Impacts

The re-refining process is a net consumer of energy. Re-refining uses between 5,000 and 14,000 British thermal units (Btus) per barrel of oil produced. In addition, because the re-refined oil product will be used as a lubricant, rather than as a fuel, the heating value of the oil is foregone.

However, re-refining is no different than virgin oil refining in this respect. Virgin oil refining requires 500–1,000,000 Btus per barrel of oil, depending on the type of crude oil used. And, because the oil is used as a lubricant, rather than as a fuel, the heating value of the vigin oil likewise is foregone.

C. Executive Order No. 12291

Under Executive Order No. 12291, EPA must determine whether a regulation is major or nonmajor. The proposed guideline is not a major rule because it is unlikely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Increased usage of the re-refined oil products addressed by this guideline is not expected to produce recurring annual effects on the economy. The re-refining industry will incur some one-time costs in implementing the guideline, including product qualification and expansion of production to meet increased demand. The Federal government will also incur some one-time costs for implementing administrative procedures associated with the guideline. However, these one-time costs are not expected to be major.

An expanded market for used oil, coupled with EPA's new burning and blending regulations, might increase the cost of used oil to vendors (recyclers and blenders) but decrease the cost of used oil to re-refiners. Additionally, the cost of the final re-refined product itself is expected to be no less than that of a virgin refined product of the same category. To the extent it is less, civilian purchasers and various government procuring agencies can expect to benefit from this re-refined product cost advantage.

In the highly mechanized re-refining industry, production expansion is not expected to change the level of employment. Some vendors of the particular products affected by this guideline may not continue to sell those products to government agencies. However, it is not expected that government sales of these particular products, in most cases, represent a significant portion of the vendors' revenue. Therefore, the level of employment is expected to be unaffected by the guideline, while productivity measures may actually increase with its implementation.

In conclusion, no significant adverse effects are expected to result from the guideline as proposed.

This proposed rule was submitted to the Office of Management and Budget for review as required by Executive Order No. 12291.

D. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As described in the environmental, energy, and economic impact document, the economic impact on both small businesses and small governmental jurisdictions is expected to be in some cases, negligible and in other instances, beneficial. An extremely limited number of business and governmental entities are affected at all by the guideline. Therefore, the proposed guideline is not expected to have significant economic impact on a substantial number of small entities. As a result, the guideline does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 252

Engine lubricating oil, Gear oil, Government procurement, Hydraulic fluid, Military specifications, Recycling, Re-refined oils, Resource recovery.

Dated: October 7, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations by adding a new Part 252 reading as follows:

PART 252—GUIDELINE FOR FEDERAL PROCUREMENT OF LUBRICATING OILS CONTAINING RE-REFINED OIL

Subpart A—General

Subpart B—Specifications

Subpart C—Affirmative Procurement Program

Authority: 42 U.S.C. 6912(a) and 6962.

Subpart A—General

§ 252.1 Purpose.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, as that section applies to procurement of engine lubricating oils, hydraulic fluids, and gear oils meeting certain military specifications.

(b) This guideline contains recommendations for use in implementing the requirements of section 6002, including revision of specifications and procurement.

(c) The Agency believes that adherence to the recommendations in the guideline constitutes compliance with section 6002. However, procuring agencies may adopt other types of procurement programs consistent with section 6002.

§ 252.2 Designation.

EPA designates engine lubricating oils, hydraulic fluids, and gear oils which meet the specifications listed in § 252.10 of this guideline as items which are or can be produced with recovered materials (re-refined oil) and whose

procurement by procuring agencies will carry out the objectives of section 6002 of RCRA.

§ 252.3 Applicability.

(a) This guideline applies to all procuring agencies and to all procurement actions involving the oils designated in § 252.2 where the procuring agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. For purposes of this guideline, items in each of the following categories are considered to be functionally equivalent: Engine lubricating oils meeting the specifications in § 252.10(a); and hydraulic fluids meeting the specifications in § 252.10(b).

(b) The term "procurement actions" includes purchases made directly by a procuring agency and purchases made by any person directly in support of work being performed for a procuring agency (e.g., by a contractor).

(c) This guideline does not apply to purchases which are not the direct result of a contract, grant, loan, funds disbursement, or agreement with a procuring agency.

§ 252.4 Definitions.

As used in this guideline:

(a) "Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*

(b) "Engine lubricating oils" means petroleum-based oils used for reducing friction in engine parts.

(c) "Federal agency" means any department, agency, or other instrumentality of the Federal Government; any independent agency or establishment of the Federal Government including any Government corporation; and the Government Printing Office.

(d) "Gear oils" means petroleum-based oils used for lubricating machinery gears.

(e) "Hydraulic fluids" means petroleum-based hydraulic fluids.

(f) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body.

(g) "Practicable" means capable of being used consistent with: Performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition.

(h) "Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, which is the subject of any purchase, barter, or other exchange made to procure such item.

(i) "Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(j) "Re-refined oils" means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(k) "Specification" means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references.

Subpart B—Specifications

§ 252.10 Recommendations.

(a) The Department of Defense has revised the following specifications to eliminate restrictions on use of re-refined oils. EPA recommends that procuring agencies use these specifications when procuring the oils designated in § 252.2:

(1) *Engine lubricating oils.*—(i) *MIL-L-46152 (current version)*—Lubricating Oil, Internal Combustion Engine, Administrative Service. (ii) *MIL-L-2104 (current version)*—Lubricating Oil, Internal Combustion Engine, Tactical Service. (iii) *MIL-L-21260 (current version)*—Lubricating Oil, Internal Combustion Engine, Preservative and Break-In. (iv) *MIL-L-46167 (current version)*—Lubricating Oil, Internal Combustion Engine, Arctic.

(2) *Hydraulic fluids.*— (i) *MIL-H-5606 (current version)*—Hydraulic Fluid, Petroleum Base; Aircraft, Missile, and Ordnance. (ii) *MIL-H-6083 (current version)*—Hydraulic Fluid, Petroleum Base, For Preservation and Operation.

(3) *Gear oils.*— (i) *MIL-L-2105 (current version)*—Lubricating Oil, Gear, Multipurpose.

(b) Copies of these military specifications can be obtained from: Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120.

§ 252.11 Revisions.

(a) Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications, by May 8, 1986 to eliminate any exclusion of recovered materials and any requirement that items be manufactured from virgin materials.

(b) Within one year after the effective date of this guideline, each procuring agency must assure that its specifications for the oils designated in § 252.2 require the use of re-refined oils to the maximum possible without jeopardizing the intended end use of these items.

(c) The specifications identified in § 252.10 should be used by procuring agencies as a guide when revising specifications in accordance with this section.

Subpart C—Affirmative Procurement Program

§ 252.20 General.

Within one year after the date of publication of this guideline as a final rule, each procuring agency which procures the oils designated in § 252.2 must establish an affirmative program for procuring such oils containing re-refined oils. The program must meet the requirements of section 6002(i) of RCRA including the establishment of a preference program; a promotion program; procedures for obtaining estimates and certification of recovered materials content and for verifying the estimates and certifications; and an annual review and monitoring program. This subpart provides recommendations for implementing section 6002(i).

§ 252.21a Preference program. (Alternative 1)

(a) EPA recommends the following affirmative procurement program: That procuring agencies establish minimum re-refined oil content standards for the oils designated in § 252.2 of this part, subject to the limitations described in paragraphs (b) and (c) of this section, so as to achieve procurement of re-refined oils to the maximum extent practicable.

(b) The recommendations in paragraph (a) of this section, as well as any other affirmative procurement program that an agency may adopt, are subject to the following limitations listed in section 6002(c)(1) of RCRA:

(1) Maintenance of a satisfactory level of competition;

(2) Availability within a reasonable period of time;

(3) Ability to meet the specifications in the invitation for bids;

(4) Availability at a reasonable price.

(c) Procuring agencies should make determinations regarding competition, availability, and price in accordance with the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1 *et seq.*

§ 252.21b Preference program. (Alternative 2)

(a) EPA recommends the following affirmative procurement program: That procuring agencies establish minimum re-refined oil content standards for the oils designated in § 252.2 of this part, subject to the limitations described in paragraphs (c) and (d) of this section, so as to achieve procurement of re-refined oils to the maximum extent practicable.

(b) EPA recommends that procuring agencies set their minimum re-refined oil content standard at the highest level of re-refined oil that they determine meets the statutory criteria of performance, availability, and price (described in paragraph (c) of this section, but no lower than 25 percent re-refined oil.

(c) The recommendations in paragraphs (a) and (b) of this section, as well as any other affirmative procurement program that an agency may adopt, are subject to the following limitations provided in section 6002(c)(l) of RCRA:

(1) Maintenance of a satisfactory level of competition;

(2) Availability within a reasonable period of time;

(3) Ability to meet the specifications in the invitation for bids;

(4) Availability at a reasonable price.

(d) Procuring agencies should make determinations regarding competition, availability, and price in accordance with the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1 *et seq.*

(e) Procuring agencies should review their procurement procedures and eliminate any practice that unfairly discriminates against re-refined oils.

§ 252.22 Promotion program.

EPA recommends that procuring agencies use the following methods, at a minimum, to promote their preference programs:

(a) Place a statement in procurement invitations in the *Commerce Business Daily* or similar publications describing the preference program.

(b) Describe the preference program in lubricating oil procurement solicitations or invitations to bid.

(c) Discuss the preference program at bidders' conferences.

(d) Inform industry trade associations about the preference program.

§ 252.23 Estimates, certification, and verification.

(a) When a vendor supplies an oil designated in § 252.2 of this part, the contracting officer must require the vendor to estimate the total percentage of re-refined oils in that oil. EPA recommends that procuring agencies maintain records of these estimates for three years by type of product, quantity purchased, and price paid.

(b)(1) When a procurement solicitation or invitation for bid requires a minimum re-refined oil content, procuring agencies must require offerors or bidders to certify that the percentage of re-refined oils to be used in the performance of the contract will be at least the amount required by the solicitation or invitation for bid. EPA recommends that procuring agencies insert in solicitations or invitations for bid a certification provision such as the Recovered Material Certification contained in 48 CFR 52.223–4.

(2) When a contract requires a minimum re-refined oil content, procuring agencies must require suppliers to certify that the minimum re-refined oil content was utilized.

(c) The affirmative procurement program must contain reasonable verification procedures for estimates and certifications. EPA recommends that procuring agencies revise the contract quality assurance procedures developed under Part 46 of the FAR to include verification of estimates and certifications.

§ 252.24 Annual review and monitoring.

(a) Each procuring agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program.

(b) EPA recommends that the annual review include the following items:

(1) An estimate of the quantity of refined oils purchased and the total quantity purchased of the oils designated in § 252.2 of this part.

(2) An assessment of the effectiveness of the promotion program.

(3) An assessment of any remaining barriers to purchase of re-refined oils to determine whether they are internal (e.g., resistance to use) or external (e.g., unavailability).

§ 252.25 Implementation.

Procuring agencies must begin procurement of the oils designated in § 252.2, in compliance with this guideline, one year from the date of publication of this guideline.

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Monday
October 19, 1987

Part III

Department of Education

34 CFR Part 215

Follow Through Program; Final Regulations and Notice of Invitation for Applications for New Awards for 1988-89 School Year

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 215

Follow Through Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Follow Through Program. These final regulations include changes made to comply with the requirements of Executive Order 12291 and its overall objective of reducing regulatory burden, and changes made by the Human Services Reauthorization Act of 1986. The final regulations also provide for a significant redirection of the program by placing greater emphasis on the demonstration and dissemination of effective approaches designed to improve the school performance of low-income children in kindergarten and primary grades. In addition, these final regulations expand the eligible applicants to include new as well as existing grantees.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 2043, MS–6276), Washington, DC 20202; telephone: (202) 732–4694.

SUPPLEMENTARY INFORMATION:

A. Background

Since 1968, the Follow Through Program (42 U.S.C. 9861 through 9868) has offered, in a research setting, comprehensive services to children from low-income families. The program has primarily served children in kindergarten and primary grades who were previously enrolled in Head Start or similar preschool programs. The principal goal of Follow Through has been to develop knowledge about various educational practices that can assist low-income children in developing to their full potential. Central to this focus was the strategy of "planned variation," whereby a number of different approaches to early childhood education were implemented in local Follow Through projects. The developers of these approaches have been called "sponsors." Most local projects have chosen to work with sponsors, although a small number have implemented approaches that they themselves have developed. To provide for longitudinal data collection and eventual phaseout of the program, participation has been restricted for a number of years to continuing projects and sponsors.

The Human Services Reauthorization Act of 1986 reauthorized the Follow Through Program through fiscal year (FY) 1990. The legislative history accompanying this reauthorization made clear that Follow Through is to be a competitive grant program and that the grant award process should consider new as well as existing grantees. Consistent with this legislative history, these final regulations make significant changes in the grant award process. Under these regulations, the Secretary awards two types of Follow Through grants. One type is local project grants, including grants to local projects affiliated with a sponsor and grants to self-sponsored local projects. The other type is sponsor grants.

Grantees are selected through two competitions. One competition is among joint local project-sponsor applications. To apply, one to five local project applicants must affiliate with a sponsor and submit a joint application with the sponsor. Separate grants, however, are made to each local project and each sponsor. The other competition is among self-sponsored local project applications. To apply under this competition, local project applicants not affiliated with a sponsor must submit individual applications. Under both competitions, the Secretary encourages new applicants and existing grantees to submit applications.

In addition to opening the program to new applicants, these final regulations provide for a significant redirection of Follow Through. Although the program continues to provide comprehensive services to low-income children in kindergarten and primary grades, greater emphasis is placed on the demonstration and dissemination of effective approaches specifically designed to improve the school performance of those children. Because education is an extraordinarily effective means of escaping poverty for disadvantaged children, the Secretary is particularly interested in studying, publicizing, and replicating what works for educating children from poor families. As a result, the Secretary invites local educational agencies, institutions of higher education, and other appropriate agencies that have found successful approaches for improving the school performance of children from low-income families to apply for Follow Through grants so that those approaches may be demonstrated and disseminated to public and private schools.

On April, 30, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (52 FR 15896–15903). With one exception discussed below, these final regulations make no significant changes from the NPRM. Therefore, readers are referred to the preamble of the NPRM (52 FR 15896–15898) for a detailed explanation of the provisions in these final regulations.

B. Significant Changes From the NPRM

These final regulations make only one significant change from the NPRM. That change, which is contained in § 215.4(a)(2)(ii), requires a local Follow Through project to establish a parent committee to promote parent participation. The importance of parent participation in Follow Through has been emphasized since the beginning of the program, particularly through parent-oriented policy advisory committees. In the NPRM, the Secretary continued to stress the importance of active parent involvement in Follow Through. The Secretary acknowledged, however, that parent involvement may take a variety of forms, best determined by the local projects that receive Follow Through funds. As a result, the NPRM did not require local projects to establish policy advisory committees. A high percentage of commenters, however, recommended that the final regulations be changed to require parent committees. According to the commenters, parent committees have been the framework for ensuring strong, effective parent involvement in Follow Through projects. A number of commenters expressed fear that not requiring parent committees would diminish the level of parent participation that has been achieved in Follow Through projects over the years. In response to these comments, § 215.4(a)(2) has been changed to require local projects to establish parent committees. In makig this change, the Secretary does not intend to reduce the flexibility of local projects. Rather, the Secretary encourages projects to be creative and insightful in designing parent activities that address the particular needs of the local community.

This aspect of the regulations will have a positive impact on the family and is consistent with the requirements of Executive Order 12606—The Family. These regulations strengthen the

authority and participation of parents in the education of their children.

C. Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, twenty-one parties submitted comments on the proposed regulations. Many commenters, in addition to suggesting specific changes, endorsed the redirection of the program as reflected in these final regulations. For example, a number of commenters expressed approval of the emphasis on demonstration and dissemination of effective Follow Through practices as a highly cost-effective means of replicating successful approaches in order to improve school performance of children from low-income families. Several commenters complimented the Department for promoting effective dissemination through the "single school" concept. Similarly, several commenters supported the Department's efforts to encourage active parent participation while keeping the regulations from being overly prescriptive and leaving as many decisions as possible to local discretion.

An analysis of the comments and the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the sections of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 215

Education, Education of disadvantaged, Education—research, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

Dated: September 18, 1987.

(Catalog of Federal Domestic Assistance No. 84.014, Follow Through Program)

William J. Bennett,

Secretary of Education.

The Secretary revises Part 215 of Title 34 of the Code of Federal Regulations to read as follows:

PART 215—FOLLOW THROUGH PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met by a Grantee?

Subpart E—What Compliance Procedures May the Secretary Use?

Authority: 42 U.S.C. 9861–9868.

Subpart A—General

§ 215.1 What is the Follow Through Program?

Follow Through is a program that serves primarily low-income children in kindergarten and primary grades who were previously enrolled in Head Start or similar preschool programs, including other federally assisted preschool programs of a compensatory nature. The goals of the program are to—

(a) Provide comprehensive services that will help these children develop to their full potential;

(b) Achieve active parent participation in the development, conduct, and overall direction of services to these children;

(c) Produce knowledge about innovative educational approaches specifically designed to assist these children in their continued growth and development; and

(d) Demonstrate and disseminate effective Follow Through practices.

(Authority: 42 U.S.C. 9861, 9863)

§ 215.2 What type of grants does the Secretary award?

The Secretary awards two types of Follow Through grants:

(a) Local project grants, including grants for—

(1) Local projects affiliated with a sponsor; and

(2) Self-sponsored local projects.

(b) Sponsor grants.

(Authority: 42 U.S.C. 9861(a), (c), 9863(a), 9866)

§ 215.3 Who is eligible for an award?

(a) *Local Follow Through projects.* (1) Except as provided in paragraph (a)(2) of this section and § 215.33(b), the

Secretary awards local Follow Through project grants to local educational agencies (LEAs).

(2) The Secretary may award a grant to another public or appropriate private nonprofit agency, organization, or institution if the Secretary determines it is necessary to include in Follow Through significant numbers of eligible children who are not or cannot be served by an LEA.

(b) *Sponsors.* The Secretary may award Follow Through sponsor grants to—

(1) Institutions of higher education:

(2) Regional educational laboratories; or

(3) Other appropriate public or private nonprofit agencies, organizations, or institutons.

(Authority: 42 U.S.C 9861(a), (b), 9863(a), 9866)

§ 215.4 What does a local Follow Through project do?

(a) Unless the Secretary in particular cases specifies otherwise, a local Follow Through project must include the following components:

(1) An educational component that includes—

(i) Implementation of an innovative educational approach specifically designed to improve the school performance of low-income children in kindergarten and primary grades; and

(ii) Orientation and training for Follow Through staff, parents, and other appropriate personnel.

(2) A parent participation component that provides for—

(i) The active participation of Follow Through parents in the development, conduct, and overall direction of the local project, including activities such as—

(A) Notifying each childs' parents in a timely manner that the child has been selected to participate in Follow Through;

(B) Informing each child's parents of the specific instructional objectives for the child;

(C) Reporting to each child's parents on the child's progress;

(D) Establishing conferences between individual parents and teachers;

(E) Providing materials, suggestions, and training to parents to help them work with their children at home;

(F) Providing timely information concerning the Follow Through Program including, for example, program plans and evaluations;

(G) Soliciting parents' suggestions in the development, conduct, and overall direction of the project;

(H) Consulting with parents about how the school can work with parents to achieve the program's objectives;

(I) Providing timely responses to parents' recommendations; and

(J) Facilitating volunteer or paid participation by parents in the project;

(ii) The establishment of a parent committee to promote active parent participation.

(3) A support services component that provides health, social, nutritional, and other support services to aid the continued development of Follow Through children to their full potential.

(4) A demonstration component that affords opportunities to examine in operation, and to assess the qualities of, effective Follow Through practices for the purpose of encouraging adoption of those practices by other public and private schools having similar educational needs.

(5) For self-sponsored local projects, a dissemination component that provides for the dissemination of effective Follow Through practices to public and private school officials, including—

(i) Encouraging adoption of those effective practices by other public and private schools;

(ii) Providing training and technical assistance to persons interested in adopting the effective practices; and

(iii) Following the progress of the adopted practices.

(b) Except as needed to implement § 215.33, a local Follow Through project must be conducted in only one school, unless the Secretary determines that particular circumstances warrant inclusion of more than one school.

(Authority: 42 U.S.C. 9861(a), (c))

§ 215.5 What does a Follow Through sponsor do?

A Follow Through sponsor shall—

(a) Assist local Follow Through projects affiliated with the sponsor in implementing the innovative educational approach specifically developed by the sponsor to improve the school performance of low-income children in kindergarten and primary grades by—

(1) Providing orientation and training to Follow Through staff, parents, and other appropriate personnel;

(2) Recommending or making available necessary materials;

(3) Helping to identify available public and private resources that can contribute to the development of a comprehensive project;

(4) Monitoring implementation;

(5) Evaluating or participating in the evaluation of the effectiveness of the project; and

(6) Providing additional technical assistance, as appropriate; and

(b) Demonstrate and disseminate effective Follow Through practices to public and private school officials by—

(1) Encouraging adoption of those effective practices by other public and private schools;

(2) Providing training and technical assistance to persons interested in adopting the effective practices; and

(3) Following the progress of the adopted practices.

(Authority: 42 U.S.C. 9863(a), 9866)

§ 215.6 What children may participate in a local Follow Through project?

(a) A local Follow Through project must serve primarily low-income children enrolled in kindergarten and primary grades who have participated in a full-year Head Start or similar preschool program, including other federally assisted preschool programs of a compensatory nature.

(b) To meet the requirement in paragraph (a) of this section, a local project must ensure that at least—

(1) Sixty percent of the children enrolled in the project are from low-income families; and

(2) Sixty percent of the children have had preschool experience as described in paragraph (a) of this section.

(c) Children determined to be low-income at the time they are enrolled in a local Follow Through project may be considered to be low-income for the duration of their participation in the project.

(Authority: 42 U.S.C. 9861(a), (c))

§ 215.7 What regulations apply?

The following regulations apply to the Follow Through Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 215.

(Authority: 42 U.S.C. 9861–9868)

§ 215.8 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application

Award
Budget
EDGAR
Elementary school
Equipment
Grant
Grantee
Local educational agency
Materials
Nonprofit
Preschool
Private
Project
Public
Secretary
Supplies

(b) *Other definitions.* The following definitions also apply to this part:

"Approach" means a coherent, innovative educational strategy—based on one or more theories of child growth and development—that is specifically designed to improve the school performance of low-income children in kindergarten and primary grades. An approach consists of at least—

(1) Classroom or home-based teaching and management practices;

(2) Required or suggested curriculum materials;

(3) Provisions for regular staff training and monitoring; and

(4) Evaluation procedures.

"Follow Through children" means all children participating in a local Follow Through project.

"Follow Through parent" means a parent, legal guardian, or other person acting in the place of a parent of a child who is or will be participating in a local Follow Through project.

"Follow Through staff" means all persons who are employed full- or part-time in a local Follow Through project, whether or not they are paid with Federal Follow Through funds.

"Low-income Follow Through children" means children participating in a local Follow Through project from families whom the applicant has determined, using the best available data, to be low-income. Examples of data the applicant may use include eligibility under the National School Lunch Program, data on children from families receiving Aid to Families with Dependent Children, or other appropriate measures for determining low-income status.

"Primary grades" means grades one through three inclusive.

(Authority: 42 U.S.C. 9861–9868)

§ 215.9 [Reserved]

Subpart B—How Does One Apply for an Award?

§ 215.10 How does an applicant apply to operate a local Follow Through project?

An applicant may apply for a grant to operate a local Follow Through project in two ways:

(a) *Joint local project-sponsor application.* A local project applicant shall submit a joint application with a sponsor whose approach the applicant will implement, except that no more than five local project applicants may apply with any sponsor.

(b) *Self-sponsored local project application.* A local project applicant shall submit an application without affiliating with a sponsor if the applicant has developed or implemented an innovative educational approach specifically designed to improve the school performance of low-income children in kindergarten and primary grades.

(Authority: 42 U.S.C. 9861 (a), (c))

§ 215.11 How does an applicant apply to be a Follow Through sponsor?

An applicant for a grant to be a Follow Through sponsor shall submit a joint application with one or more local projects that will implement the innovative educational approach developed by the sponsor, except that a sponsor may apply with no more than five local projects.

(Authority: 42 U.S.C. 9863(a), 9866)

§§ 215.12–215.19 [Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 215.20 How does the Secretary evaluate an application for a Follow Through grant?

(a) *General.* (1) For each type of grant, the Secretary awards up to 100 possible points for the selection criteria in each applicable section of these regulations.

(2) The maximum possible score for each criterion is indicated in parentheses.

(b) *Self-sponsored local project application.* The Secretary uses the criteria in § 215.21 to evaluate each application for a self-sponsored local project.

(c) *Joint local project-sponsor application.* (1) The Secretary uses the criteria in § 215.22 to evaluate each application for a sponsored local project contained in a joint application.

(2) The Secretary uses the criteria in § 215.23 to evaluate the application of the sponsor contained in a joint application.

(3) To obtain a total score for a joint application, the Secretary—

(i) Averages the points awarded to all the local project applicants contained in the joint application; and

(ii) Adds that local project average score to the sponsor's score.

(Authority: 42 U.S.C. 9861 (a), (c), 9863(a), 9866)

§ 215.21 What section criteria does the Secretary use for self-sponsored local Follow Through project applications?

(a) *Educational component.* (25 points) The Secretary reviews each application for a self-sponsored local Follow Through project to determine the effectiveness of the innovative educational approach the applicant has developed or implemented to improve the school performance of low-income children in kindergarten and primary grades. The Secretary also reviews each application for the percentage of low-income children and the percentage of children with preschool experience who will participate in the project.

(b) *Parent participation component.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to provide for active participation of Follow Through parents in the development, conduct, and overall direction of project activities.

(c) *Support services component.* (10 points) The Secretary reviews each application to determine the quality of the support services the applicant will provide to Follow Through children.

(d) *Demonstration component.* (10 points) The Secretary reviews each application to determine the quality of the applicant's plan to—

(1) Demonstrate effective practices in the delivery of Follow Through services; and

(2) Provide opportunities for observation of all aspects of the project.

(e) *Dissemination component.* (10 points) The Secretary reviews each application to determine the quality of the applicant's plan to disseminate information about its effective Follow Through practices to public and private school officials, including the extent to which the applicant will—

(1) Encourage adoption of those effective practices by other public and private schools;

(2) Provide training and technical assistance to persons interested in adopting the effective practices; and

(3) Follow the progress of the adopted practices.

(f) *Quality of key personnel.* (5 points) (1) The Secretary reviews each application to determine the quality of

the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel; and

(iii) The time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(g) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant provides for the coordination of Follow Through services with existing local resources.

(h) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan and any evaluation results to date, including—

(1) Methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(2) The extent to which an applicant's evaluation design meets the standards established in § 215.34.

(Authority: 42 U.S.C. 9861(a), (c), 9865(b))

(Approved by the Office of Management and Budget under control number 1810–0003)

§ 215.22 What selection criteria does the Secretary use for sponsored local Follow Through project applications?

(a) *Educational component.* (25 points) The Secretary reviews each application for a sponsored local Follow Through project contained in a joint application to determine the capability of the applicant to implement a sponsor's approach, including information concerning the applicant's accomplishments to date, where appropriate. The Secretary also reviews each application for the percentage of low-income children and the percentage of children with preschool experience who will participate in the project.

(b) *Parent participation component.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to provide for active participation of Follow Through parents in the development, conduct, and overall direction of project activities.

(c) *Support services component.* (10 points) The Secretary reviews each application to determine the quality of the support services the applicant will provide to Follow Through children.

(d) *Demonstration component.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plant to—

(1) Demonstrate effective practices in the delivery of Follow Through services; and

(2) Provide opportunities for observation of all aspects of this project.

(e) *Quality of key personnel.* (5 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel; and

(iii) The time that each person referred to in paragraphs (e)(1)(i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraphs (e)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant provides for the coordination of Follow Through services with existing local resources.

(g) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan and any evaluation results to date, including—

(1) Methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(2) The extent to which an applicant's evaluation design meets the standards established in § 215.34.

(Authority: 42 U.S.C. 9861(a), (c), 9865(b))

(Approved by the Office of Management and Budget under control number 1810–0003)

§ 215.23 What selection criteria does the Secretary use for Follow Through sponsor application?

(a) *Educational approach.* (25 points) The Secretary reviews the application for a Follow Through sponsor grant contained in each joint application to determine the effectiveness of the innovative educational approach the applicant has developed to improve the school performance of low-income children in kindergarten and primary grades.

(b) *Implementation assistance.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to assist the local projects with which it is affiliated in implementating the applicant's approach, including—

(1) Providing orientation and training to Follow Through staff, parents, and other appropriate personnel;

(2) Recommending or making available necessary materials;

(3) Helping to identify available public and private resources that can contribute to the development of a comprehensive project;

(4) Monitoring implementation; and

(5) Providing additional technical assistance, as appropriate.

(c) *Demonstration and dissemination.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to demonstrate and disseminate information about effective Follow Through practices to public and private school officials, including the extent to which the applicant will—

(1) Assist local projects with which it is affiliated in demonstrating effective practices;

(2) Encourage adoption of those effective practices by other public and private schools;

(3) Provide training and technical assistance to persons interested in adopting the effective practices; and

(4) Follow the progress of the adopted practices.

(d) *Quality of key personnel.* (5 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director,

(ii) The qualifications of each of the other key personnel; and

(iii) The time that each person referred to in paragraphs (d)(1) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each

application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation.* (25 points) The Secretary reviews each application to determine the quality of the evaluation plan and any evaluation results to date, including—

(1) Methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(2) The extent to which an applicant's evaluation design meets the standards established in § 215.34.

(Authority: 42 U.S.C. 9863(a), 9865(b), 9866)

(Approved by the Office of Management and Budget under control number 1810-0003)

§ 215.24 What other factors does the Secretary consider in awarding a Follow Through grant?

(a) The Secretary prepares separate rank orderings of the self-sponsored local project applications and the joint local project-sponsor applications.

(b) From the funds appropriated for Follow Through, the Secretary determines the amount of funds available for self-sponsored local project applications and the amount available for joint local project-sponsor applications.

(c) The Secretary awards a grant to a local project—both self-sponsored and sponsored—only if the applicant—

(1) Obtains a rating of at least 70 points; and

(2) Meets the requirements in § 215.4(a).

(d) Under a joint local project-sponsor application, the Secretary—

(1) Awards a grant to a sponsor only if a grant will be made to at least one local project that will implement the sponsor's approach; and

(2) Does not award a grant to any local project applicant included in the joint application, even if the local project applicant scores 70 points or more, if the joint application does not rank sufficiently high to receive funding.

(Authority: 42 U.S.C. 9861, 9863, 9866)

§§ 215.25-215.29 [Reserved]

Subpart D—What Conditions Must be Met by a Grantee?

§ 215.30 What program requirements must a local project grantee meet?

In addition to implementing the components listed in § 215.4(a), a local Follow Through project grantee shall meet the following program requirements:

(a) *Project director.* A local project grantee shall appoint a full- or part-time director to be responsible for overall program management.

(b) *Employment of personnel.* In the hiring of personnel, a local project grantee shall, to the maximum extent feasible, give preference to the following:

(1) Low-income Follow Through parents.

(2) Other residents of the area served by the project.

(Authority: 42 U.S.C 9861 (a), (c), 9867(a))

§ 215.31 What program requirements must a sponsor meet?

A Follow Through sponsor shall meet the following program requirements:

(a) *Responsibilities.* A sponsor shall perform, at a minimum, the activities listed in § 215.5.

(b) *Project director.* A sponsor shall appoint a full- or part-time director to be responsible for overall program management.

(Authority: 42 U.S.C. 9863(a), 9866)

§ 215.32 What fiscal requirements must a local project grantee meet?

(a) *Prohibition against supplanting.* (1) A local project grantee shall use Follow Through funds for services that are in addition to, and not in substitution for, services previously provided without Federal assistance.

(2) To meet the requirements in paragraph (a)(1) of this section, a local project grantee shall contribute for the education of the children participating in the Follow Through project, at a minimum, the level of funds that would, in the absence of Follow Through funds, be made available from non-Federal sources for the education of those children.

(b) *Federal share.* (1) Unless a local project meets the criteria in paragraph (b)(2) of this section, a local project grantee may not use Follow Through funds to pay for more than 80 percent of the total approved costs of Follow Through services and activities.

(2) The Secretary may approve the use of Follow Through funds to pay for more than 80 percent of the total approved costs of the project if the Secretary determines that—

(i) The local grantee has made a reasonable effort to meet its non-Federal share requirement; and

(ii)(A) The project serves an area in which the per capita personal income is equal to or less than one-half of the current poverty income guideline, for a family unit of four members, published by the Department of Health and Human Services in the **Federal Register.**

(B) The project serves an area that has been involved in a major disaster; or

(C) The project serves an area that has been affected by unusual circumstances that have significantly reduced the financial or human resources that would otherwise be available as non-Federal share.

(Authority: 42 U.S.C. 9862 (b), (c))

§ 215.33 What are the requirements for participation of private school children?

(a) A local Follow Through project grantee shall provide for participation of eligible students enrolled in private nonprofit elementary schools.

(b) If an LEA is unable or unwilling to include in its local project eligible children enrolled in private nonprofit elementary schools, the Secretary may provide financial assistance to any other public or appropriate private nonprofit agency, organization, or institution for the purpose of serving those children.

(Authority: 42 U.S.C. 9861 (a), (b))

§ 215.34 What evaluation requirements apply to a grantee?

(a) A grantee's evaluation must comply with the following requirements:

(1) A grantee's evaluation design must include objective measures of the educational progress of project participants when measured against an appropriate nonproject comparison group. These measures should include performance on standardized testing instruments, grade retention, truancy, or referral to or placement in special education.

(2) A grantee's evaluation design must meet the following technical standards:

(i) *Representativeness of evaluation findings.* The evaluation results must be computed so that the conclusions apply to the persons, schools, or agencies served by the projects.

(ii) *Reliability and validity of evaluation instruments and procedures.* The evaluation procedures must minimize error by providing for proper administration of the evaluation instruments, at twelve-month testing intervals, accurate scoring and transcription of results, and the use of analysis and reporting procedures that are appropriate for the data obtained from the evaluation.

(b) A grantee shall modify the project, if necessary, as a result of the evaluation of the project.

(Authority: 42 U.S.C. 9865(b))

§§ 215.35–215.39 [Reserved]

Subpart E—What Compliance Procedures May the Secretary Use?

§ 215.40 What procedure does the Secretary use before terminating a grant?

The Secretary does not terminate Follow Through funds for a grantee's failure to comply with applicable terms and conditions unless the Secretary has afforded the grantee reasonable notice and an opportunity for a hearing under 34 CFR Part 78 (Education Appeal Board).

(Authority: 42 U.S.C. 9867(b))

§§ 215.41–215.49 [Reserved]

Appendix—Summary of Comments and Responses

(Note: This appendix will not appear in the Code of Federal Regulations.)

What Types of Grants Does the Secretary Award? (§ 215.2)

Comments: Two commenters requested that resource center grants be reinstated as one of three types of grants in § 215.2. The commenters felt that resource centers had not been adequately funded to be as effective as they could have been.

Discussion: The Secretary's decision not to fund resource center grants is due in part to the limited funding levels for the program. In order for the program to remain viable, the Secretary believes that the program must be refocused. These final regulations, therefore, emphasize demonstration and dissemination activities for all projects, rather than a few selected projects as in the past. In addition, local projects will be limited to a single school site. The limitation of local projects to one school, the emphasis on demonstration and dissemination, and the deemphasis on direct services are ways in which funds are made available to support fully project grants without an increase in appropriations.

Changes: None.

What Does a Local Follow Through Project Do? (§ 215.4)

Comments: Many commenters expressed a desire to have parent advisory councils required in § 215.4(a)(2), because they believed that parent advisory councils are important to the implementation and success of many programs, particularly programs for disadvantaged students. The commenters believed that parent committees have been the framework for ensuring strong, effective parent involvement in Follow Through projects. A number of commenters expressed fear that not requiring parent committees would diminish the level of parent participation that has been achieved in Follow Through projects over the years.

Several commenters were concerned that the emphasis on demonstration and dissemination would minimize the support services a family would receive and would also minimize sponsor guidance in dissemination activities.

A number of commenters preferred that the program not operate in a single school as required in § 215.4(b).

Another commenter wanted clarification of the Department's position on implementing kindergarten programs in local Follow Through projects.

Discussion: In the NPRM, the Secretary stressed the importance of active parent involvement in Follow Through. The Secretary acknowledged, however, that parent involvement may take a variety of forms, best determined by the local projects that receive Follow Through funds. As a result, the NPRM did not require local projects to establish policy advisory committees. In response to the high percentage of comments favoring parent committees, the Secretary has decided to require local projects to establish parent committees. In making this change, the Secretary does not intend to reduce the flexibility of local projects in devising additional means of involving parents. Rather, the Secretary encourages projects to be creative and insightful in designing parent activities that address the particular needs of the local community.

Although the regulations emphasize demonstration and dissemination activities, the program will continue to provide comprehensive services to low-income children and their families. The Secretary believes, however, that it is most cost-effective to concentrate on publicizing and replicating effective educational approaches—including comprehensive services designed for improving the school performance of children from poor families. Through these demonstration and dissemination activities, a greater number of families will eventually receive services through replication of effective Follow Through practices. Sponsors continue to have a primary role in demonstrating and disseminating effective practices as §§ 215.5(b) and 215.23(c) make clear. For local projects affiliated with a sponsor, the demonstration component is implemented jointly by the sponsor and the local project; dissemination is the sponsor's responsibility. As noted in § 215.4(a)(4) and (5), self-sponsored local projects have both a demonstration and a dissemination component because they have no sponsor affiliation.

The limitation of a local project to one school will provide for a more effective concentration of resources and a sharper focus within a school district. Moreover, in view of the emphasis on demonstration and dissemination activities, the Secretary believes that a project located in one school will be better able to demonstrate effective Follow Through practices. As indicated in § 215.4(b), however, the Secretary may waive this requirement if the Secretary determines that particular circumstances warrant inclusion of more than one school.

There is no statutory requirement that local Follow Through projects include kindergarten in their programs, although if Follow Through is truly to preserve gains made in Head Start or similar preschool programs, it is likely that most local projects will have kindergarten components. Those projects that include a full day of kindergarten, even though the school district has half-day or no kindergarten, certainly are eligible for funding.

Changes: Section 215.4(a)(2) has been changed to require a local Follow Through project to establish a parent committee to promote active parent participation.

What does a Follow Through Sponsor do? (§§ 215.5(a)(3) and 215.23(b)(3))

Comments: One commenter recommend that §§ 215.5(a)(3) and 215.23(b)(3) be clarified by indicating that sponsors "assist" local agencies in identifying public and private resources that can contribute to the development of a comprehensive project.

Discussion: The Secretary agrees that local projects should share in the responsibility for identifying other resources.

Changes: The Secretary has clarified §§ 215.5(a)(3) and 215.23(b)(3) by revising the language to point out that sponsors "help" local projects identify available public and private resources.

What Children May Participate in a Local Follow Through Project? (§ 215.6)

Comments: A number of commenters were concerned with the provision in § 215.6(b) that requires that at least 60 percent of the children enrolled in a local project be from low-income families and at least 60 percent have preschool experience. Specifically, most commenters expressed concern with the impact of § 215.6(b) on their desegregation efforts or the segregating effect of § 215.6(b) itself. Others were concerned that the concentration of

high-risk children would pose a problem in obtaining positive outcomes. The commenters recommended a return to the current 50 percent requirement as being more desirable.

Discussion: Section 662(a) of the Follow Through Act states, in part, that "Follow Through programs [must be] focused *primarily* on children from low-income families * * * who were previously enrolled in Head Start or similar programs." (emphasis added). To ensure that projects are directing their services primarily to low-income children and children with preschool experience, the final regulations impose a more exacting standard than the current regulations by requiring a minimum 60 percent participation by low-income children and a minimum 60 percent participation by children with preschool experience. The Secretary believes that the 60 percent requirement more closely implements the statutory provision and ensures that Follow Through services are targeted on low-income children. At the same time, the Secretary does not believe that the increase from 50 to 60 percent will have the negative effects the commenters fear.

Changes: None.

What Regulations Apply? (§ 215.7(a))

Comments: One commenter felt that State procedures for implementing Executive Order 12372, in some instances, went beyond what was necessary to comply with the intent of the Order. Specifically, the commenter questioned the reason for submitting applications for State review in all States where demonstration and dissemination activities would be provided when no direct Federal financial assistance would be provided to those States.

Discussion: An applicant must comply with the requirements concerning Executive Order 12372 in its own State. The applicant need not submit its application to other States, however, since the States in which services will be performed will not be known at the time an application is filed. Prior to providing any services, in a State other than its home State, a grantee must contact the State's Single Point of Contact to determine if the State wishes to review its project.

Changes: None.

What Definitions Apply? (§ 215.8(b))

Comments: One commenter requested clarification of the definition of "primary grades," noting that the definition does not mention kindergarten. Another commenter questioned whether the use of guidelines other than U.S. Poverty Income Guidelines is allowable for determining a family's low-income status.

Discussion: As the definition of "low-income Follow Through children" indicates, a local project may determine a family's low-income status by measures other than the U.S. Poverty Income Guidelines. For example, a local project may use data for the National School Lunch Program, Aid to Families with Dependent Children, or other appropriate measure for determining a family's low-income status. The choice of an appropriate measure is at the discretion of the local project.

Section 662(a) of the Follow Through Act refers to children "in kindergarten and primary grades * * *." Thus, the statute does not include kindergarten as a primary grade. For this reason, the Secretary defines "primary grades" as "grades one through three inclusive" and does not include kindergarten in that definition.

Changes: None.

How Does One Apply for an Award? (§§ 215.10(a) and 215.11)

Comments: Several commenters objected to the provisions in §§ 215.10(a) and 215.11 that limit a joint local project sponsor application to no more than five local project applicants. The commenters noted that no similar provision is contained in the Follow Through regulations curently in effect. The commenters were concerned that some outstanding projects now associated with sponsors with more than five affiliated local projects would be eliminated. They were also concerned that those sponsors with more than five sites would have the unpleasant task of selecting among existing sites.

Discussion: The legislative history accompanying the recent reauthorization of Follow Through makes clear that Follow Through is to be a competitive grant program and that the grant award process should consider new as well as existing grantees. Accordingly, the final regulations provide the opportunity for new applicants and existing grantees to apply for Follow Through funds. Through the competitive process, the Secretary is interested in obtaining the widest range of educational approaches in order to demonstrate and disseminate successful approaches to other locatities. The Secretary believes that a maximum of five local sites will provide sufficiently diverse circumstances for a sponsor to demonstrate the versatility of its approach, while enabling the Secretary to fund the greatest number of different approaches possible with the available funds. Nothing in the regulations precludes an LEA with a current local project from applying to operate separate projects with more than one sponsor or to operate a self-sponsored local project.

Changes: None.

What Other Factors Does the Secretary Consider in Awarding a Follow Through Grant? (§ 215.24)

Comments: Several commenters expressed concern that individual grants may not be large enough to support implementation of the projects, particularly the demonstration and dissemination components. Some questioned the wisdom of opening the competition to new grantees and suggested that the Department fund fewer projects and sponsors to allow an adequate funding level for those projects that are funded. However, another commenter suggested that the Department was exceeding statutory authority and Congressional intent by substantially reducing the number of grants made.

One commenter requested clarification on the rating of applicants' scores in § 215.24(d)(2), noting that there is a minimum score for self-sponsored projects but not for sponsored projects.

Discussion: The Secretary believes that applicants should have sufficient flexibility in designing their projects to ensure the projects meet the purposes of the program. The regulations allow that flexibility, but at the same time reflect the reality that Follow Through is a demonstration program, not a large service program like Head Start.

The legislative history accompanying the reauthorization of the Follow Through program makes clear that Follow Through is to be a competitive grant program and that the grant award process should consider new as well as existing grantees. The new policies should result in the maximum number of awards being made. If any reduction in the number of awards occurs, it will be because of the Secretary's efforts to ensure that projects are sufficiently funded to be successful.

Section 215.24(c) provides that the Secretary awards a grant to a local project—either self-sponsored or sponsored—only if the applicant obtains a rating of at least 70 points. As a result, if a local project scores below 70, it will not be funded—even if it is part of an otherwise successful joint local project-sponsor application. Its score will be averaged with the other local projects, however, to obtain the average local project score for the joint application. As § 215.20(c)(3) indicates, the total

score for a joint local project-sponsor application is the sponsor's score plus the average of the points awarded to all the local project applicants contained in the joint application. There is no minimum score for sponsor applicants.

Changes: None.

What Program Requirements Must a Local Project Grantee Meet? (§ 215.30)

Comments: One commenter suggested that the Follow Through director should be an integral part of the school organization with line authority. Another commenter suggested that part-time directors be involved with the same populations or functions in their non-Follow Through time as they are when working on Follow Through assignments.

Another commenter opposed the omission of direct language that would serve to underscore the Federal commitment to equal opportunity employment and meaningful opportunities for parental participation.

Discussion: Nothing in § 215.30(a) prohibits local project grantees from hiring a director who is an integral part of the school organization or who also works with low-income children at other times. However, it would not be appropriate for the Department to require these conditions. Grantees should choose a director who has appropriate professional qualifications, experience, and administrative skills and who will best meet the needs of the project.

The employment preferences noted in § 215.30(b) accurately reflect section 668(a) of the Follow Through Act, which states that "[r]ecipients of financial assistance under this [Act] shall provide maximum employment opportunities for residents of the area to be served, and to parents of children who are participating in projects assisted under this [Act]." The Department has not lessened its commitment to equal opportunity employment. All Follow Through grantees are still subject to Federal statutes and regulations prohibiting discrimination. Those requirements are currently listed in 34 CFR 75.500.

Changes: None.

What Fiscal Requirements Must a Local Project Grantee Meet? (§ 215.32(a))

Comments: One commenter was concerned that, if a local project uses local funds to provide supplemental Follow Through activities in a year when Federal Follow Through funds are insufficient to fund such activities and charges those same activities to the Federal grant in a subsequent year, the project would violate the supplanting prohibition.

Discussion: In addition to requiring a 20 percent non-Federal share of the local project costs, § 215.32(a)(2) requires a local project grantee to contribute, at a minimum, the levels of funds that would, in the absence of Follow Through funds, be made available from non-Federal sources for the education of the children participating in the project. If the grantee would not use local funds to provide certain supplemental services to Follow Through children in the absence of the Follow Through project, the local project grantee may use Follow Through funds to provide those services in years when sufficient Follow Through funds are available.

Changes: None.

What Are the Requirements for Participation of Private School Children?(§ 215.33)

Comments: Several commenters raised concerns about the requirement that local projects provide for the participation of private school children, including concerns about the full-day nature of the Follow Through program, the erosion of services to public school children, and the location of the services.

Discussion: Section 215.33 accurately reflects the requirement in section 662(a) of the Follow Through Act that local projects must provide services "focused primarily on children from low-income families in kindergarten and primary grades, including such children enrolled in private nonprofit elementary schools * * *." If a local project is unable or unwilling to provide those services to private school children, § 215.33(b) authorizes the Secretary to provide financial assistance to any other public or appropriate private nonprofit agency, organization, or institution for the purpose of serving those children.

Changes: None.

What Evaluation Requirements Apply to a Grantee? (§ 215.34)

Comments: Commenters expressed a variety of concerns over the evaluation requirements in § 215.34. Specifically, commenters requested that a "defined evaluation design" be included in the regulations, suggested expanding the regulations to include alternative evaluation measures based on multiple-year rather than single-year evaluations, questioned the focus on child outcome measures when many Follow Through programs are directed at adults who work with children, and questioned the appropriateness of comparison groups.

Discussion: The Secretary believes that, because of the significant philosophical and operational differences among various Follow Through approaches, it would be inappropriate for the Department to require a specific evaluation design. Rather, the Secretary believes that the general evaluation standards in § 215.34 are more appropriate because they allow grantees to design evaluations that measure the success of the particular intervention employed by the grantee.

The wording of § 215.34(a) does not exclude alternative evaluation measures, but neither does the wording require that measures such as performance on standardized testing, grade retention, etc., be included. While multiple-year evaluation is important, this can be done in tandem with, or as a result of, a series of single-year evaluations. The very important use of evaluative data to improve projects on a continuing basis must not be overlooked. Section 666(a) of the Follow Through Act requires evaluations to include comparisons with appropriate control groups, where appropriate.

Changes: Section 215.34 has been changed to require a grantee to modify its project, if necessary, as a result of an evaluation of the project.

What Procedure Does the Secretary use Before Terminating a Grant? (§ 215.40)

Comments: Several commenters requested clarification of the procedures for terminating a grant in § 215.40 as they apply to current Follow Through grantees.

Discussion: Section 215.40 reflects the statutory requirement in section 668(b) of the Follow Through Act that the Department may not terminate Follow Through funds for a grantee's failure to comply with applicable terms and conditions unless the grantee has been afforded reasonable notice and opportunity for a full and fair hearing. Under 34 CFR 74.110, "termination" of a grant means "permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee." Therefore, the Department may not terminate the current grants before they expire on June 30, 1988, without providing notice and an opportunity for a hearing. However, the procedures in § 215.40 do not apply to the Department's decision not to award, following a competition, a new grant to a current Follow Through grantee because that grantee did not score sufficiently high to receive funding. That funding decision is not a "termination" of funds under 34 CFR 74.110.

Changes: None.

[FR Doc. 87-23257 Filed 10-16-87; 8:45 am]
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DEPARTMENT OF EDUCATION

[CFDA No.: 84.014]

Invitation for Applications for New Awards Under the Follow Through Program for School Year 1988–89

Purpose: To serve the needs of primarily low-income children in grades K–3 who have had preschool experience by providing grants to local educational agencies to operate local projects, and to institutions of higher education, regional educational laboratories, and other appropriate public or private nonprofit agencies to act as sponsores.

Deadline For Transmittal of Applications: December 11, 1987.

Deadline For Intergovernmental Review Comments: February 9, 1988.

Applications Available: October 13, 1987.

Available Funds: The Administration's budget for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The estimates below are based on the amount appropriated for fiscal year 1987.

Estimated Awards and Funds By Category:

	Number	Amount
Sponsors	14	$2,290,000
Self-sponsored local projects	12	1,512,000
Sponsored local projects	45	3,375,000
Total	71	7,177,000

Project Period: The Follow Through program, if funded, will make multi-year awards. Budget periods will be for 12 months. Performance periods will be for 36 months.

Applicable Regulations: (a) The Follow Through Program Regulations, 34 CFR Part 215. The regulations specify two competitions—open among self-sponsored local project applications and one among joint local project-sponsor applications—in which new applicants as well as existing grantees may apply.

(b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: James M. Spillane, U.S. Department of Education, 400 Maryland Avenue SW., Room 2017, Washington, DC 20202. telephone: (202) 732–4694.

Program Authority: 42 U.S.C. 9861–9868.

Dated: October 2, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–23287 Filed 10–16–87; 8:45 am]

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Monday
October 19, 1987

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 575

Emergency Shelter Grants Program; Final Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 575

[Docket No. R-87-1316; FR-2298]

Emergency Shelter Grants Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements the Emergency Shelter Grants Program contained in HUD's appropriation for fiscal year 1987. The Program authorizes HUD to make grants to States, units of general local government, and private nonprofit organizations for the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, for the payment of certain operating expenses, and for essential social service expenses in connection with emergency shelters for the homeless.

The purpose of the Program is to help improve the quality of emergency shelters for the homeless, to make available additional emergency shelters, and to meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, so that these individuals have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance they need to improve their situations.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States, James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

The FY 1987 Appropriations Act

On December 17, 1986, the Department published a proposed rule and program requirements for fiscal year 1987 (51 FR 45278) implementing the Emergency Shelter Grants ("ESG") program contained in Title V, Part C of HUD's appropriation Act for the 1987 fiscal year (H.R. 5313) (the 1986 ESG program). Under section 525(a) of the Act, HUD has notified the affected States, metropolitan cities, and urban counties of their respective allocations for fiscal year 1987 and has implemented the program in accordance with the statutory requirements. This final rule replaces the proposed rule and program requirements and governs the allocation and use of funds appropriated for the 1986 ESG program.

The McKinney Act Emergency Shelter Grants Program

On July 22, 1987, the President approved the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77) which reauthorized the ESG program, but without repealing the 1986 ESG program. The McKinney Act ESG program differs significantly from the 1986 ESG program. Section 416(a) of the McKinney Act, however, requires HUD to operate the 1987 ESG program using the 1986 requirements until notice and comment rulemaking to implement the McKinney Act provisions is completed. The Department believes that certain provisions of the McKinney Act relating to allocation of grant funds and the use of a Comprehensive Assistance Plan must be implemented immediately. The Department has published a notice at 52 FR 33790 (September 4, 1987) concerning these matters as well as a notice (52 FR 30628, August 14, 1987) implementing the Comprehensive Plan requirements contained in Subtitle A of the McKinney Act. This final rule, together with those notices, govern the operation of the McKinney Act ESG program until a final rule can be promulgated.

The Department intends to publish a proposed rule for the McKinney Act ESG program by October 1987 and a final rule (establishing a new CFR part) as quickly as possible thereafter consonant with providing full consideration to the public comments received.

Discussion of Public Comments and Changes Made in the Final Rule

The Department received 29 public comments in response to the December 17, 1986 proposed rule. There follows a discussion of these comments and a review of the changes made in the final rule both in response to public comments and internal departmental initiatives.

Several commenters asked that a definition of "primarily religious" be included in the final rule to differentiate it from "pervasively sectarian", another term used in the proposed rule. The Department has refrained from including such a definition in this final rule since "primarily religious" is synonymous with the term "pervasively sectarian", as that term has been used by the Supreme Court in its First Amendment church/state decisions.

A commenter urged that the list of eligible activities be amended to include mental health services as one of the services that a grantee may provide. The Department has adopted this suggestion by including mental health services under the list of eligible activities at § 575.21(a), and has made a conforming amendment to §575.57, Assistance to the homeless. The commenter, however, mistakenly characterized these eligible activities as mandatory; a grantee may choose among these activities.

A commenter suggested that the list of eligible activities be expanded to include the acquisition or construction of new buildings. This suggestion was not adopted in the final rule since it exceeds the scope of the program's enabling legislation which limits the use of program funds to the renovation, major rehabilitation, or conversion of buildings, and does not include their acquisition or construction.

Another commenter requested that housing arrangements for special populations of the homeless, including transitional housing and group homes for homeless persons who are mentally ill, be explicitly premitted under the ESG Program. In this final rule, the Department has included a definition of the term "emergency shelter" at § 575.3 as "any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless". This definition encompasses transitional housing and similar arrangements that provide longer term accommodations, so long as the maximum length of stay does not exceed 18 months. Similarily, housing for special populations of the homeless is eligible for funding under

the ESG program. It should be noted, however, that the final rule does not permit use of program funds for permanent residences.

A question arose in the public comments as to whether paying for furnishings, not in connection with other assistance for rehabilitation or essential services, constitutes an eligible program activity and, if so, whether the furnishings may be used in a building owned by a religious organization. Buying furnishings for an emergency shelter is an eligible activity under § 575.21(a)(3), whether or not the grantee undertakes other eligible activities with respect to the shelter. Moreover, furnishings purchased with emergency shelter grant allocations may be used in an emergency shelter owned by a religious organization, so long as the emergency shelter is operated in a manner free from religious influences under conditions prescribed in the assistance agreement.

Several commenters inquired about the types of activities that trigger the use commitment at § 575.53. One commenter in particular questioned whether the provision of furnishings, which can readily be removed from the shelter, locks a grantee into using that particular building for three years. The Department has included clarifying language to assist the reader in determining when the use commitment is triggered. The rule now makes clear that the use of ESG funds for any of the activities listed in § 575.21(a)(1) or (3) (including the provision of furnishings) triggers the three-year use commitment, but that the essential services listed at § 575.21(a)(2) do not.

The 10-year continued use requirement was objected to by a commenter on the ground that it severely restricts the number of not-for-profit agencies willing to provide emergency shelter for the homeless. This commenter observed that even fewer nonsectarian organizations have the financial means to acquire such long-term control over property which can then be feasibly adapted for program use. Nevertheless, the Department does not have discretion to revise this aspect of the rule since the 10-year continued use requirement is statutorily mandated.

Several commenters objected to the limitation in § 575.21(a) that no more than 15 percent of a grant allocation to a unit of general local government may be used for "essential services". These commenters argued that the limitation unnecessarily hinders local government's ability to provide services to the homeless—particularly where a municipality delegates the provision of such services to a not-for-profit agency which would not otherwise be subject to the funding restriction. The Department shares these concerns. While this provision was statutorily mandated under the 1986 ESG program, Congress has since provided (under section 414(b) of the McKinney Act) that the Department may waive the 15 percent limitation if the unit of general local government demonstrates that (1) other eligible activities under the program are already being carried out in the locality with other resources; and (2) grant amounts cannot practicably be used for eligible activities other than essential services. Although section 414(b) was included in the 1987 ESG program, and not the 1986 program, the Department believes that it is inappropriate to ignore the clear congressional intent that units of general local government be relieved from the strictures of the 15 percent cap in certain circumstances. Therefore, the Department will entertain requests under § 575.5 to waive the 15 percent ceiling on essential services, for amounts made available by the supplemental Appropriations Act, 1987. Waiver requests from State recipients must first be sent to the State. The State will then promptly send waiver requests to HUD, together with any comments or recommendations it may have on them. (The Department is publishing a notice in today's **Federal Register** that establishes the standards for requesting a waiver under the ESG program.)

A commenter asked that the final rule clarify whether the 15 percent limitation applies only to local governments or whether it also applies to other grantees and recipients. The Department has added clarifying language to § 575.21(a)(2)(ii) to indicate that the 15 percent limitation applies only to grant amounts provided to a unit of general local government (including grant amounts that the unit of general local government distributes to nonprofit recipients). It does *not* apply to direct grants by HUD to nonprofit organizations under the reallocation procedures described in § 575.41. Although there is no direct limitation on a nonprofit recipient's use of grant amounts for essential services, a unit of local government may have to impose such restrictions on one or more of the nonprofit recipients to which it distributes grant amounts to ensure that the unit of general local government is itself in compliance with the 15 percent limitation.

One commenter urged that the prohibition against renting commercial transient accommodations be removed in the final rule and that such activity be considered an eligible activity if undertaken by a nonprofit organization. Upon reconsideration, the Department has decided to remove this prohibition from the list of ineligible activities since the three-year commitment required under § 575.53(a) precludes the renting of hotel rooms on a sporadic basis. (It should be noted that the ten year use commitment at § 575.53 would apply where ESG grant funds are used for the major rehabilitation or conversion of hotel or motel space to facilitate its use as an emergency shelter.) Under this final rule, hotel space rented for a period of at least three years (or ten years in the case of major rehabilitation or conversion) is considered an eligible activity under §575.21(a)(3), so long as the grantee or recipient certifies that: (1) There is an agreement that comparable rooms, in terms of quality, available amenities, and square footage (but not necessarily the same room or rooms for the entire period) will be available for use as an emergency shelter for the entire three years (or ten years, as applicable); (2) the lease can be procured at substantially less than the going daily room rates; and (3) the grantee or recipient has considered alternative facilities and has determined that the use of the hotel or motel space provides the most cost-effective means of providing emergency shelter for the homeless in its jurisdiction.

A number of commenters objected to the prohibition against using grant funds to pay for staff costs involved in operating the shelters, arguing that staff expenses constitute a major portion of any program's operating budget. This prohibition is statutory, and the Department believes it is needed to prevent program funds from being used to pay for employment costs associated with running a shelter, rather than for providing the basic necessities of life for the homeless.

Similarly, the Department received numerous inquiries about whether a prorated portion of a staff member's salary can be considered an eligible expense if the staff member is providing an eligible activity such as maintenance or an essential service. For example, if a shelter operator provides transportation for shelter residents by driving the shelter's van, can that portion of his or her time spent on this transportation service be considered an eligible expense? The answer to this question is "no." The payment of a shelter staff member's salary—whether or not a portion of the staff member's time is devoted to providing an eligible activity—should not be considered an eligible expense. Because the Department believes that, in most shelters, the operator typically provides

a variety of services and functions, to determine otherwise would compromise the statutory prohibition.

A commenter asked that ESG funds be awarded through cities' Community Development Block Grant programs, rather than on a statewide basis, so that shelters in smaller communities are not being ignored. This suggestion was not adopted since the ESGP allocation formula is statutorily mandated.

One commenter suggested that information on how funded activities interrelate with other efforts to house the homeless should be required under the Homeless Assistance Plan. The Department has not adopted this suggestion. The suggested information might be useful but, given the clear legislative intent to keep the Homeless Assistance Plan simple (*see* H.R. Rep. No. 99-230, 99th Cong., 1st Sess. 81 (1986)), and the need to allocate grant amounts quickly, the Department does not believe that this additional information should be required. (For the sake of clarity to the reader, it should be noted that the requirements of the Homeless Assistance Plan will be superseded by the Comprehensive Homeless Assistance Plan under the McKinney Act ESG program, 52 FR 30628, August 14, 1987.)

A commenter urged that the ESG program be made subject to intergovernmental evaluation under Executive Order 12372, since it affects State and local human service planning efforts and would likely impact upon community infrastructure. The Department has partially adopted this suggestion. Under 24 CFR 52.3, the Department periodically publishes in the **Federal Register** a list of HUD programs subject to intergovernmental evaluation, and specifies the extent to which they must adopt Part 52 procedures. In the most recent notice identifying programs subject to Part 52 (52 FR 29488, August 7, 1987), the Department made those ESG program applications that involve reallocation of grant amounts to grantees; involve major rehabilitation of an emergency shelter, or the conversion of a building to an emergency shelter; and that are site-specific, subject to the intergovernmental procedures under 24 CFR Part 52.

Another commenter asked that each State be notified officially of its allocation under the Program and that the final rule indicate whether the **Federal Register** publication date is the operative date. Under current procedures, the Department sends letters to States and units of general local government officially notifying them of their allocation under the program. The date of notification is used by the Department in determining the relevant submission deadlines.

A commenter claimed that the 180-day deadline under § 575.37(b) for obligating grant allocations is unreasonable because of the required local approval process, and urged that the final rule instead provide that HUD funds be obligated according to a timetable set out in the application. The Department disagrees. It is imperative that ESG funds be obligated as rapidly as possible. The Department's experience has been that the 180-day deadline is reasonable. If a situation arises in which a grantee believes that complying with the 180-day deadline is impossible, it should request a waiver of the requirement under § 575.5.

Another commenter claimed that under the proposed deadlines, applicants that can quickly assemble the necessary documentation may receive awards to the detriment of applicants that cannot meet the deadline but that have projects with greater merit. There is a risk that occasionally a relatively more meritorious application may not be considered because the applicant fails to submit a timely application. Nonetheless, the Department believes that the deadlines set out in this section strike a proper balance betwen the competing need to provide sufficient time for applications to be prepared and the need to avoid delay in providing aid to the homeless.

One commenter requested that grantees, rather than FEMA Boards and HUD field offices, be given the first opportunity to redistribute unused or returned grant funds, since a grantee is likely to have the most thorough understanding of the homeless situation in its jurisdiction. The Department has not adopted this suggestion since a grantee that has rejected the program, thereby causing funds to be "returned", can scarcely be asked to redistribute that which it refused to distribute in the first place. For similar reasons, unused funds should not be redistributed by the governmental unit that could not obligate them in a timely manner. The various sources of unused grant amounts and the sporadic manner in which they can be expected to become available for reallocation make it necessary to aggregate these funds and distribute them to a limited number of grantees. Nevertheless, departmental procedures do permit States to redistribute funds that their recipients fail to obligate. (It should be noted that FEMA boards are not given the authority to redistribute unused or returned grant funds. Rather, under § 575.41, they are a resource that HUD may use to identify applicants for reallocated grant amounts).

To ensure continuity and predicatability in local homeless programs, a commenter requested that unused grant amounts be reallocated to the original grantees on a national scale, using a predetermined formula. The Department believes that the statutory reallocation formula provides greater flexibility and that, given the relatively small amount of funds involved in reallocation, a change in the reallocation formula is unwarranted.

In addition, on its own initiative, the Department has amended the timing provision for submission of the annual and State interim performance reports. Under the proposed rule, the annual report was due one year from the date of the grant award. Interim reports were required to be filed by States within 90 days of the HUD grant award. This final rule establishes a uniform reporting cycle ending December 31, with annual reports due 30 days thereafter. Interim reports are required to be submitted by States within 90 days of the State's distribution of funds to its units of general local government. However, the interim report will be extended whenever a HUD Area Office grants a State an extension of the 65-day deadline for obligating its grant funds.

Restriction on the Use of Grant Amounts With Respect to Buildings Owned by Primarily Religious Organizations

The majority of the comments received concerned § 575.21(b)(2) of the proposed rule. This provision would preclude the use of grant funds "to renovate, rehabilitate, or convert buildings owned by primarily religious organizations or entities." In the main, commenters expressed the opinion that the provision goes beyond constitutional requirements regarding the separation of Church and State and would work to prevent participation by many religious organizations. Commenters also expressed the opinion that HUD's Church/State inquiry should focus primarily on the nature of the activity to be funded, not the organization carrying out the activity. We have given consideration to the arguments presented on this complex constitutional issue and have revised our requirements as noted below.

The First Amendment of the Constitution provides that "Congress shall make no law respecting an establishment of religion." In accordance with this constitutional mandate, the United States Supreme Court has adopted certain principles, in the form of three frequently cited tests,

to be used when passing on the constitutionality of Federal assistance.

First, the statute under which the assistance is to be provided must reflect a clearly secular purpose. Second, the statute must have a primary effect that neither advances nor inhibits religion. Third, the statute and its administration must avoid excessive governmental entanglement with religion. *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971). Working out case applications of these principles has been extraordinarily difficult. Chief Justice Burger noted in the majority opinion in *Lemon* that the language in the First Amendment is "at best opaque." 403 U.S. at 612.

The first test, that the statute reflect a clearly secular purpose, is generally not problematic and does not pose a problem here. As enacted, the Emergency Shelter Grants Program is designed to improve the quality of existing emergency shelters for the homeless, to help make available additional emergency shelters, and to help meet the costs of operating emergency shelters and of providing certain essential social services to homeless individuals. All of the above clearly reflect a secular purpose.

In constructing the reach of the second part of the *Lemon* test, the Court in *Hunt* v. *McNair*, 413 U.S. 734 (1973) stated:

> Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting. *Id.* at 742.

Government assistance to a "pervasively sectarian" organization for any purpose, *secular or religious*, or the funding of a religious activity in secular surroundings, is thus generally viewed as "advancing religion" in violation of First Amendment principles.

Commenters cited *Tilton* v. *Richardson*, 403 U.S. 672 (1971), *Hunt* v. *McNair*, *supra*, and *Roemer* v. *Maryland Board of Public Works*, 426 U.S. 736 (1976), for the proposition that government assistance can be provided to a religious organization to carry out the secular activity of renovating a building owned by it for use in the Emergency Shelter Grants Program. While each of these cases upheld aid to religiously affiliated colleges, they do not support the commenters' position. It is key that in each of these cases, government assistance for secular activities was allowed to stand only after a thorough examination of the characteristics of the institutions led to a specific finding that they were not primarily religious. The determination for constitutional compliance thus requires an examination of the extent to which religion pervades the functions of an institution.

In considering the nature of "pervasively sectarian organizations" Justice Blackmun, speaking for the majority in *Roemer*, declared:

> To answer the question whether an institution is so "pervasively sectarian" that it may receive *no* direct State aid of any kind, it is necessary to paint a general picture of the institution. *Id.* at 758.

Unquestionably, churches are "pervasively sectarian." Additionally, there are other fundamentally religious organizations which conform to the profile of a sectarian or substantially religious institution.

Having stated the above, we are of the opinion that direct assistance under the Emergency Shelter Grants Program to churches or other primarily religious organizations to renovate, rehabilitate, or convert buildings owned by them would be constitutionally impermissible under the second test of *Lemon*, notwithstanding the secular use to which they would be put by such institutions as emergency shelters.

Finally, even if this were not the case, the administrative oversight which would be necessary to assure avoidance of impermissible religious influences in the use of such buildings would most certainly involve an "excessive government entanglement" with religion in violation of the third test. As the Court stated in *Walz v. Tax Commission*, 397 U.S. 664 (1970), "a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards * * *" 397 U.S. at 675.

In 1983, in order to confirm the Department's understanding with respect to constitutional limitations (particularly with respect to the second and third tests under *Lemon*), the Department requested guidance from the Department of Justice (DOJ) concerning the effect of Supreme Court Church/State decisions on HUD programs, specifically the section 202 direct loan program and the community development block grant program.

Under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q, loans are made to private nonprofit corporations, limited profit sponsors, consumer cooperatives, public bodies or agencies to develop housing for the elderly or handicapped. To allow religious organizations to participate as sponsors of section 202 projects, HUD requirements provide that religious sponsors must establish private, secular nonprofit borrower corporations to obtain the loan and execute the mortgage as legal owner of the project. The question posed to DOJ was whether the HUD requirements in this regard were constitutionally mandated. In the context of issues raised in the Emergency Shelter Grants Program, it is important to note that the section 202 housing program is an entirely secular activity in nature and purpose.

The DOJ ruled that the creation of a separate secular borrowing entity in the section 202 program is constitutionally required. In reaching this result, DOJ concluded that if separate secular borrower entities were not established, direct and substantial aid would flow to churches, in violation of the Establishment Clause. The opinion states, "where section 202 loans given directly to churches or other fundamentally religious organizations, the principle that no aid at all go to institutions that are so 'pervasively sectarian' that secular activities cannot be separated from sectarian ones, see *Roemer* v. *Maryland Public Works Board*, 426 U.S. at 755, would by definition be violated."

Title I of the Community Development Block Grant Act was enacted in 1974 to consolidate a number of community development categorical grant programs. Over the course of the block grant program, questions were presented as to whether churches or church-owned property could be rehabilitated with block grant funds. Departmental advice was that such assistance could not be provided. This conclusion was based in part on *Committee for Public Education* v. *Nyquist*, 413 U.S. 756, 777 (1973) which states that "if the State may not erect buildings in which religious activities are to take place, it may not maintain such buildings or renovate them when they fall into disrepair."

The DOJ opinion concluded that HUD's longstanding policy of prohibiting CDBG funds to rehabilitate, maintain or restore churches reflects constitutional requirements and, further, that "*any* structure used to promote religious interests, regardless whether constructed for educational, charitable or whatever purposes, may not * * * receive federal assistance." A subsequent DOJ opinion also confirmed the HUD position that the prohibition applies notwithstanding the fact that the structure has historic significance.

In addressing the Church/State issue in the proposed rule, the Department

was guided by relevant Supreme Court cases, as well as the legal opinions from DOJ. With this underpinning, the proposed rule proscribed the use of Emergency Shelter Grants funds to renovate, rehabilitate, or convert buildings owned by primarily religious (a term described in the preamble to be synonymous with "pervasively sectarian") organizations or entities.

In reviewing this matter, the Department has been particularly struck by the vital and unique role religious organizations play in providing for individuals in need of shelter and other public assistance. In view of this, every attempt has been made to further explore mechanisms to facilitate that role within the framework of the Frist Amendment Church/State principles outlined above. After a thorough reconsideration of all the issues presented, the Department is of the opinion that it would be constitutionally permissible to use Emergency Shelter Grants to renovate, rehabilitate or convert buildings owned by "pervasively religious" organizations under the following circumstances:

1. The building (or portion thereof) that is to be improved with the HUD assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious organization);

2. The HUD assistance is provided to the lessee (and not the lessor) to make the improvements;

3. The leased premises will be used exclusively for secular purposes available to all persons regardless of religion;

4. The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

5. The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

6. The lessor enters into a binding agreement that, unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements.

7. The lessee must remit the residual value of the improvements referred to in (6) above to the original grantee from which the amounts were derived, e.g., if the amounts initially were made available to a State or unit of general local government as a formula allocation (§ 575.31) or a reallocation (§ 575.41), the amount that the lessor provides to the lessee is then remitted to the State or unit of general local government, as appropriate. The original grantee may use this amount to further the objectives of this part. If, however, a private nonprofit organization is the lessee as well as the grantee, the organization must remit the amount to HUD.

The lessee may also enter into a management contract authorizing the lessor religious organization to operate the facility, including the provision of essential services, in carrying out the secular purpose. In such case, the religious organization must agree in the management contract to carry out its contractual responsibilities in a manner free from religious influences pursuant to conditions prescribed by HUD.

While allowing Emergency Shelter Grant funds to be used to renovate, rehabilitate or convert buildings owned by primarily religious organizations, these requirements have been carefully tailored to ensure that constitutionally impermissible assistance to religious entities is avoided. Thus, the religious organization conveys control of the premises to be assisted during the life of the improvements and the provision of assistance is to a secular lessee for a secular purpose. Under such an arrangement, in accordance with the constitutional mandate, religious organizations will derive no direct benefit from improvements to the premises made with HUD assistance.

Nondiscrimination

Two of the nondiscrimination requirements with which use of emergency shelter grants must comply as provided in § 575.59(a) are Title VIII of the Civil Rights Act of 1968 and Executive Order 11063, which prohibit discrimination in housing on the basis of race, color, religion, sex, or national origin. It may well be that some emergency shelters assisted under this program would not actually be covered under these authorities. The prohibitions against discrimination in Title VIII relate only to a "dwelling", which is defined in section 802(b) of that Act to mean, in part, "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families * * *" (the word "family" includes a single individual). Judicial interpretations (*e.g., United States* v. *Hughes Memorial Home*, 396 F.Supp. 544 (W.D. Va. 1975)) regarding whether a temporary residence is a "dwelling" within the meaning of Title VIII appear to turn on whether the occupants of a place intend to remain for a substantial period of time or whether the place is rather one of temporary sojourn or transient visit. A similar issue arises under Executive Order 11063, which covers certain "housing and related facilities". Since the operation and usage of emergency shelters may vary greatly across the nation, it seemed prudent to deem these authorities generally applicable to shelters assisted under this program.

In any event, under § 575.59(a) all such shelters are subject to the Federal statutory proscriptions against discrimination with respect to race, color, national origin, age and handicap in programs involving Federal financial assistance. Consistent with the statutory intent of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, the Department has included in this final rule a requirement at § 575.59(a)(6) that the ESG recipient or grantee make known that emergency shelter facilities and services are available to all on a nondiscriminatory basis. Where the procedures that a recipient or grantee intends to use are unlikely to reach persons of any particular race, color, religion, sex or national origin who may qualify for the ESG services, the recipient or grantee is required to establish additional procedures to ensure that these persons are made aware of the availability of the facilities and services.

Lead Based Paint Provisions

The Department has included in this final rule a reference to 24 CFR Part 35 (implementing section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822). The reader is advised that under 24 CFR 35.24(b)(4), the Assistant Secretary for Community Planning and Development is required to establish procedures relating to the elimination of lead-based paint poisoning in programs involving HUD-associated housing, and the Department is considering modifying the lead-based paint standards applicable to emergency shelters in its forthcoming proposed rule to implement the McKinney Act ESG program.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because most statutorily eligible grantees and State recipients are relatively larger cities, urban counties or States. In addition, the grant amount to be made available to any ultimate user of a grant is relatively small.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3502) and have been assigned OMB control number 2506-0089.

This rule is listed as Item 1011 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362, 14363) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance program number for the Emergency Shelter Grants Program is CFDA No. 14.231.

List of Subjects in 24 CFR Part 575

Grant programs—Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

Accordingly, the Department adopts a new 24 CFR Part 575 as follows:

PART 575— EMERGENCY SHELTER GRANTS PROGRAM

Subpart A—General

Sec.

Subpart B—Eligible Activities

Subpart C—Allocations

Subpart D—Reallocations

Subpart E—Program Requirements

Subpart F—Grant Administration

Authority: Sec. 101(g), Pub. L. 99-500 (approved October 18, 1986), making appropriations as provided for in sec. 525(a) of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 575.1 Applicability and purpose.

(a) *General.* This part implements the Emergency Shelter Grants Program contained in section 101(g), Pub. L. 99-500 (approved October 18, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986). (Pub. L. 99-591, approved October 30, 1986, revised Pub. L. 99-500, but did not affect this program.) The Program authorizes the Secretary of Housing and Urban Development to make grants to States, units of general local government, and private nonprofit organizations, for the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, for the payment of certain operating expenses, and for social service expenses in connection with emergency shelters for the homeless.

(b) *Purpose.* The Program is designed to help improve the quality of existing emergency shelters for the homeless, to help make available additional emergency shelters, and to help meet the costs of operating emergency shelters and of providing certain essential social services to homeless individuals, so that these persons have access not only to safe and sanitary shelter, but also to the supportive services and other kinds of assistance they need to improve their situations.

§ 575.3 Definitions.

Conversion means a change in the use of a building to an emergency shelter for the homeless under this part, where the cost of conversion and any rehabilitation costs exceed 75 percent of the value of the building before conversion.

Emergency shelter means any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.

Emergency shelter grant amounts and *grant amounts* mean grant amounts made available under this part.

Grantee means the entity that executes a grant agreement with HUD under this part. For purposes of this part, "grantee" is

(a) Any State, metropolitan city, or urban county that receives a grant allocation under § 575.31;

(b) Any unit of general local government that receives a grant based on a reallocation under § 575.41(b)(1);

(c) Any private nonprofit organization that receives a grant based on a reallocation under § 575.41(b)(2); and

(d) Any entity that receives a grant based on a reallocation under § 575.41(b)(3).

Homeless means families and individuals who are poor and have no access to either traditional or permanent housing.

HUD means the Department of Housing and Urban Development.

Major rehabilitation means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

Metropolitan city means a city that was classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974 for the fiscal year immediately preceding the fiscal year for which emergency shelter grant amounts are made available.

Nonprofit recipient means any private nonprofit organization providing assistance to the homeless, to which a unit of general local government distributes emergency shelter grant amounts.

Obligated means that the grantee or State recipient, as appropriate, has placed orders, awarded contracts, received services or entered into similar transactions that require payment from the grant amount. Grant amounts that are awarded by a unit of general local

government to a private nonprofit organization providing assistance to the homeless are obligated.

Private nonprofit organization means a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1954 which

(a) Is exempt from taxation under Subtitle A of the Code;

(b) Has an accounting system and a voluntary board; and

(c) Practices nondiscrimination in the provision of assistance.

Rehabilitation means labor, materials, tools, and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings.

Renovation means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

State means any of the several States and the Commonwealth of Puerto Rico.

State recipient means any unit of general local government to which a State makes available emergency shelter grant amounts.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Urban county means a county that was classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974 for the fiscal year immediately preceding the fiscal year for which emergency shelter grant amounts are made available.

Value of the building means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee or the State recipient.

§ 575.5 Waivers.

The Secretary of HUD may waive any requirement of this part that is not required by law, whenever it is determined that undue hardship will result from applying the requirement, or where application of the requirement would adversely affect the purposes of the Emergency Shelter Grants Program.

Subpart B—Eligible Activities

§ 575.21 Eligible activities and ineligible activities.

(a) *Eligible activities.* Emergency shelter grant amounts may be used for one or more of the following activities relating to emergency shelter for the homeless:

(1) Renovation, major rehabilitation, or conversion of buildings for use as emergency shelters for the homeless.

(2) Provision of essential services, including (but not limited to) services concerned with employment, physical health, mental health, substance abuse, education, or food. Grant amounts provided to a unit of general local government may be used to provide an essential service only if—

(i) The service is (A) a new service or (B) a quantifiable increase in the level of a service above that which the unit of general local government provided during the 12 calendar months immediately before it received the grant amounts; and

(ii) Not more than 15 percent of any grant provided to a unit of general local government, including grant amounts that the unit of general local government distributes to a nonprofit recipient, is used for these services.

(3) Payment of maintenance, operation (including rent, but excluding staff), insurance, utilities, and furnishings.

(b) *Ineligible activities.* (1) Emergency shelter grant amounts may not be used for activities other than those authorized under paragraph (a) of this section. For example, grant amounts may not be used for:

(i) Acquisition or construction of an emergency shelter for the homeless;

(ii) The costs of staff involved in overseeing the operation of the shelter; or

(iii) Rehabilitation services performed by a grantee's or recipient's staff, such as preparation of work specifications, loan processing, or inspections.

(2) Grant amounts may not be used to renovate, rehabilitate, or convert buildings owned by primarily religious organizations or entities unless the following conditions are met:

(i) The building (or portion thereof) that is to be improved with HUD assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious organization);

(ii) The HUD assistance is provided to the lessee (and not the lessor) to make the improvements;

(iii) The leased premises will be used exclusively for secular purposes available to all persons regardless of religion;

(iv) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

(v) The portion of the cost of any improvements that also serve a nonleased part of the building will be allocated to and paid for by the lessor;

(vi) The lessor enters into a binding agreement that, unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

(vii) The lessee must remit the amount referred to in paragraph (b)(2)(vi) of this section to the original grantee from which the amounts used to renovate, rehabilitate, or convert the building under this paragraph (b)(2) were derived: *e.g.*, if the amounts under this paragraph initially were made available to a State or to a unit of general local government as a formula allocation (§ 575.31) or a reallocation (§ 575.41), the amount that the lessor provides to the lessee is remitted to the State or unit of general local government, as appropriate. The original grantee may use this amount to further the objectives of this part. If, however, a private nonprofit organization is the lessee as well as the grantee, the organization must remit the amount referred to in paragraph (b)(2)(vi) of this section to HUD;

(viii) The lessee may also enter into a management contract authorizing the lessor religious organization to operate the facility, including the provision of essential services, in carrying out the secular purpose. In such case, the religious organization must agree in the management contract to carry out its contractual responsibilities in a manner free from religious influences pursuant to conditions prescribed by HUD.

§ 575.23 Who may carry out eligible activities.

(a) *Grantees and State recipients.* All grantees (except States) and State recipients may carry out activities with emergency shelter grant amounts. All of a State's formula allocation must be made available to units of general local government in the State, which may include metropolitan cities or urban counties, whether or not such cities or counties receive grant funds directly from HUD.

(b) *Nonprofit recipients.* Units of general local government—both grantees and State recipients—may distribute all or part of their grant amounts to nonprofit recipients to be used for emergency shelter grant activities.

Subpart C—Allocations

§ 575.31 Allocation of grant amounts.

(a) *Allocation grantees.* HUD will initially allocate amounts available for emergency shelter grants to State, metropolitan cities, and urban counties.

(b) *Calculation of allocations.* In determining the amount of the allocation for each State, metropolitan city, and urban county, HUD will provide that the percentage of the total amount available for allocation to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to such State, metropolitan city, or urban county.

(c) *Reallocation to State.* If an allocation to a metroplitan city or urban county would be less than $30,000, the amount is added to the allocation to the State in which the city or county is located.

(d) *Notification of allocation amount.* HUD will notify in writing each State, metropolitan city, and urban county that is entitled to receive an allocation under this section, of the amount of its allocation.

§ 575.33 Application requirements.

(a) *Application deadlines.*—(1) *Metropolitan cities and urban counties.* A metropolitan city or urban county that elects to receive an emergency shelter grant on the basis of the allocation in § 575.31 must submit the application referred to in paragraph (b) of this section to the responsible HUD field office, no later than 45 days after the date of the notification to the city or county of its grant allocation under § 575.31(d).

(2) *States.* A State must provide written notification to the responsible HUD field office of its intention to participate in the Emergency Shelter Grants Program within 45 days of the date of the notification under § 575.31(d) to the State of its grant allocation. A State that elects to participate in the Program must submit the application referred to in paragraph (b) of this section to the responsible HUD field office, no later than 30 days after the end of the 45-day election period referred to in the preceding sentence.

(b) *Application.* To receive an emergency shelter grant, a State, metropolitan city, or urban county must submit:

(1) A Standard Form 424.

(2) A Homeless Assistance Plan, which describes the proposed use of the emergency shelter grant. In the case of a metropolitan city or urban county, the Plan must also identify the respective grant amounts proposed to be used for each of the three categories of eligible activities set forth in § 575.21(a) (1), (2), and (3). In the case of a State, the proposed use of funds must consist of a description of the method by which the grantee will make the grant amounts available to units of general local government.

(3) The following certifications and assurances: (i) A certification that the State, metropolitan city or urban county, will provide the matching supplemental funds required by § 575.51. The certification must describe the sources and amounts of the supplemental funds. A State's matching supplemental funds certification is to be submitted with its interim performance report, as provided by § 575.65.

(ii) A certification that the metropolitan city or urban county will comply, and that the State will ensure that its State recipients comply, with:

(A) The requirements of § 575.53 concerning the continued use of buildings, for which emergency shelter grant amounts are used, as emergency shelters for the homeless;

(B) The building standards requirements of § 575.55; and

(C) The requirements of § 575.57 concerning assistance to the homeless.

(iii) A certification that the metropolitan city or urban county will conduct its emergeny shelter grant activities under this part, and that the State or unit of general local government (as appropriate) will ensure that State recipients or nonprofit recipients conduct their activities under this part in conformity with the nondiscrimination and equal opportunity requirements contained in § 575.59(a) and the other requirements of this part and of other applicable Federal law.

(iv) If grant amounts are proposed to be used to provide emergency shelter for the homeless in hotels or motels, or other commercial facilities providing transient housing, a certification from the State, metropolitan city, or urban county that:

(A) The grantee, or State recipient or nonprofit recipient (as appropriate) has executed (or will execute) an agreement with the provider of such housing that comparable living space, in terms of quality, available amenities, and square footage, will be available in the facility for use as emergency shelter for at least the applicable period specified in § 575.53;

(B) Leases negotiated between the grantee, or State recipient or nonprofit recipient, with the provider of such housing make available such living space at substantially less than the daily room rate otherwise charged by the facility; and

(C) The grantee, or State recipient or nonprofit recipient, has considered using other facilities as emergency shelters, and has determined that the use of such living space in the facilities provides the most cost-effective means of providing emergency shelter for the homeless in its jurisdiction.

(4)(i) An assurance by the State, metropolitan city, or urban county that no renovation, major rehabilitation, or conversion activity funded under this part will:

(A) Involve alterations to a property that is listed on the National Register of Historic Places, is located in a historic district or is immediately adjacent to a property that is listed on the Register, or is deemed by the State Historic Preservation Officer to be eligible for listing on the Register;

(B) Take place in any 100-year floodplain designated by map by the Federal Emergency Managment Agency; or

(C) Be inconsistent with HUD environmental standards in 24 CFR Part 51 or with the State's Coastal Zone Management plan.

(ii) In lieu of the assurance required by paragraph (b)(4)(i) of this section, renovation, major rehabilitation, or conversion of a building may be carried out with emergency shelter grant amounts if:

(A)(1) The State, metropolitan city, or urban county informs HUD that an environmental review of the area in which the proposed activities are to be located—

(i) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58, and

(ii) Addressed properties, activities, and effects comparable to those proposed for assistance under this part; and

(2) HUD finds that the prior review applies to the proposed activities; or

(B) The State, metropolitan city, or urban county (1) determines that the only feasible locations for the assisted activities preclude one or more of the assurances in paragraph (b)(4)(i) of this section, and that paragraph (b)(4)(ii)(A) of this section does not apply, and (2) requests a conditional grant in accordance with § 575.35(c)(2).

(5) A certification by the State, metropolitan city, or urban county that the submission of the application required by this paragraph (b) is authorized under State and local law (as applicable), and that the grantee possesses the legal authority to carry out emergency shelter grant activities in

accordance with the provisions of this part.

§ 575.35 Review and approval of applications.

(a) *Time for approval.* An application from a State, metropolitan city, or urban county will be processed and approved as expeditiously as possible, and will be deemed approved 30 days after HUD receives it, unless within that period HUD notifies the grantee that its application is not approved.

(b) *Review of applications.* HUD will approve an application, unless it determines that the application:

(1) Was not received or postmarked within the applicable time period specified in § 575.33(a);

(2) Does not contain the items required by § 575.33(b); or

(3) Does not otherwise comply with the requirements of this part or of other Federal law.

(c) *Conditional grant.* HUD may grant a conditional grant restricting the obligation and use of emergency shelter grant amounts. Conditional grants may be made:

(1) Where there is substantial evidence that there has been, or there will be, a failure to meet the requirements of this part. In such a case, the reason for the conditional grant, the action necessary to remove the condition, and the deadline for taking those actions will be specified. Failure to satisfy the condition may result in imposition of a sanction under § 575.69 or in any action authorized under any other applicable Federal law.

(2) Where the State, metropolitan city, or urban county requests a conditional grant because the only feasible program sites for renovation, major rehabilitation, or conversion activities assisted under this part preclude one or more of the assurances in § 575.33(b)(4)(i), and § 575.33(b)(4)(ii)(A) does not apply. In such a case, HUD must comply with applicable environmental authorities before grant amounts may be committed and assisted activities may be commenced.

(d) *Grant agreement.* The grant will be made by means of a grant agreement executed by HUD and the grantee.

(e) *Reallocation amounts.* Any emergency shelter grant amounts that are returned to HUD because of (1) a failure to meet the application deadlines under § 575.33(a) or (2) an application disapproval under paragraph (b) of this section will be reallocated under § 575.41.

(f) *Letter to proceed.* Upon request of a metropolitan city or urban county, at any time after submission of an application, HUD may authorize the city or county to incur costs for subsequent reimbursement when the grant is approved.

§ 575.37 Deadlines for using grant amounts.

(a) *States and State recipients.* (1) Each State must make available to its State recipients all emergency shelter grant amounts that it was allocated under § 575.31, within 65 days of the date of the grant award by HUD.

(2) Each State recipient must have all its grant amounts obligated by 180 days after the date on which the State made the grant amounts available to it.

(b) *Metropolitan cities and urban counties.* Each metropolitan city and urban county must have all grant amounts that it was allocated under § 575.31 obligated by 180 days after the date of the grant award by HUD.

(c) *Reallocation amounts.* (1) Any emergency shelter grant amounts that are not made available or obligated within the time periods specified in paragraph (a)(1) of this section (providing 65 days of the date of the HUD grant award within which States must make funds available to their State recipients) or paragraph (b) of this section (providing 180 days after the date of the HUD grant award within which metropolitan cities and urban counties must obligate grant amounts under § 575.31) of this section, respectively, will be reallocated for use under § 575.41. Any emergency shelter grant amounts that are not made available or obligated within the time periods specified in paragraph (a)(1) or (b) of this section, respectively, will be reallocated for use under § 575.41.

(2) The State must recapture any grant amounts that a State recipient does not obligate within the time period specified in paragraph (a)(2) of this section. The State, at its option, must make these grant amounts (or other amounts returned to the State, with the exception of amounts returned under § 575.21(b)(2)(vii)) available as soon as practicable to other units of general local government for use within the time period specified in paragraph (a)(2) of this section, or to HUD for reallocation under § 575.41.

Subpart D—Reallocations

§ 575.41 Reallocation of grant amounts.

(a) *General.* From time to time, HUD will reallocate emergency shelter grant amounts that are returned or unused, as those terms are defined in paragraph (f) of this section. HUD will make reallocations by direct notification or **Federal Register** notice that will set forth the terms and conditions under which the grant amounts are to be reallocated and grant awards are to be made. HUD may use State and local boards established under FEMA's Emergency Food and Shelter Program as a resource to identify potential applicants for reallocated grant amounts.

(b) *Grantees.* Reallocations may be made to:

(1) Units of general local government demonstrating extraordinary need or large numbers of homeless individuals;

(2) Private nonprofit organizations providing assistance to the homeless; and

(3) Units of general local government, private nonprofit organizations and other entities, to meet other needs that HUD determines are consistent with the purposes of the Emergency Shelter Grants Program.

(c) *Reallocation—returned grant amounts.* HUD will endeavor to reallocate returned emergency shelter grant amounts within the jurisdiction to which the amounts were originally allocated under § 575.31.

(1) Returned grant amounts that were allocated to a State will first be made available to units of general local government within the State and, if any grant amounts remain, then to private nonprofit organizations that are providing assistance to the homeless and that are located within the State.

(2) Returned grant amounts that were allocated to a metropolitan city or urban county will be made available first for use in the city or urban county; to units of general local government that are authorized under applicable law to carry out activities under this part serving the homeless in the city or urban county; and then, if grant amounts remain, to private nonprofit organizations.

(3) The field office will announce the availability of returned grant amounts. The announcement will establish deadlines for submitting applications and will set out other terms and conditions relating to grant awards, consistent with this part. The announcement will specify the application documents to be submitted which include:

(i) A Standard Form 424;

(ii) A Homeless Assistance Plan containing the type of information required from a metropolitan city or urban county under § 575.33(b)(2);

(iii) Certifications required at § 575.33(b)(3)(iii); and (iv) Other certifications and assurances similar to those required from a metropolitan city or urban county under § 575.33(b)(3), (4) and (5), as appropriate.

(4) The field office may establish maximum grant amounts, considering the grant amounts available.

(5) The field office will rank the applications using the criteria in paragraph (e) of this section.

(6) HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application, based on competing demands for grant amounts and the extent to which the respective activities address the needs of the homeless.

(7) HUD will endeavor to make grant awards within 30 days of the application deadline or as soon thereafter as practicable.

(d) *Reallocation—unused grant amounts.* Unused grant amounts (including any amounts that remain after reallocation under paragraph (c) of this section) will be available, in HUD's discretion, for reallocation from time to time to one or more of the grantees specified in paragraph (b) of this section.

(e) *Selection criteria.* HUD will award grants under paragraphs (c) and (d) of this section based on consideration of the following criteria:

(1) The nature and extent of the unmet homeless need within the jurisdiction in which the grant amounts will be used;

(2) The extent to which the proposed activities address this need; and

(3) The ability of the grantee to carry out the proposed activities promptly.

(f) *When grant amounts are returned or unused.* (1) For purposes of this section, emergency shelter grant amounts are considered "returned" when they become available for reallocation because a grantee does not execute a grant agreement with HUD for them, *e.g.*, when a grantee for which an allocation is made under § 575.31 fails to meet the application deadlines under § 575.37(a), or has its application disapproved under § 575.33(b) or approved with a reduced grant amount in accordance with § 575.69.

(2) For purposes of this section, emergency shelter grant amounts are considered "unused" when they become available for reallocation by HUD after a grantee has executed a grant agreement with HUD for them: *e.g.*, where

(i) A State fails to make its grant amounts available to State recipients within the time period specified in § 575.33(a)(1);

(ii) A metropolitan city or urban county fails to obligate grant amounts, within the time period specified in § 575.33(b);

(iii) A State recaptures grant amounts from a State recipient and makes them available to HUD as provided in § 575.37(c)(2);

(iv) Grant amounts become available as a result of imposition of a sanction (other than a reduction of grant amounts) under § 575.69 or the close-out of a grant; or

(v) A grantee referrred to in paragraph (b) of this section fails to obligate grant amounts within the time priod specified in its grant agreement.

Subpart E—Program Requirements

§ 575.51 Matching funds.

(a) *General.* Each grantee must supplement its emergency shelter grant amounts with an equal amount of funds from sources other than under this part. These funds must be provided after the date of the grant award to the grantee. A grantee may comply with this requirement by providing the supplemental funds itself, or through supplemental funds or voluntary efforts provided by any State recipient or nonprofit recipient (as appropriate).

(b) *Calculating the matching amount.* In calculating the amount of supplemental funds, there may be included the value of any donated material or building; the value of any lease on a building; any salary paid to staff of the grantee or to any State or nonprofit recipient (as appropriate) in carrying out the emergency shelter program; and the time and services contributed by volunteers to carry out the emergency shelter program, determined at the rate of $5 per hour. For purposes of this paragraph (b), the grantee will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish a fair market value.

§ 575.53 Use as an emergency shelter.

(a) *General.* Any building for which emergency shelter grant amounts are used for one or more of the eligible activities described in § 575.21(a) (1) and (3) must be maintained as a shelter for the homeless for not less than a three-year period, or for not less than a 10-year period if the grant amounts are used for major rehabilitation or conversion of the building. Using emergency shelter grant amounts for eligible activities described in § 575.21(a)(2) does not trigger either the three- or ten-year period.

(b) *Calculating the applicable period.* The three- and 10-year periods referred to in paragraph (a) of this section begin to run:

(1) In the case of a building that was not operated as an emergency shelter for the homeless before receipt of grant amounts under this part, on the date of initial occupancy as an emergency shelter for the homeless.

(2) In the case of a building that was operated as an emergency shelter before receipt of grant amounts under this part, on the date that grant amounts are first obligated to the shelter.

§ 575.55 Building standards.

Any building for which emergency shelter grant amounts are used for renovation, conversion, or major rehabilitation must meet local government safety and sanitation standards.

§ 575.57 Assistance to the homeless.

Homeless individuals must be given assistance in obtaining:

(a) Appropriate supportive services, including permanent housing, physical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(b) Other Federal, State, local, and private assistance available for such individuals.

§ 575.59 Other Federal requirements.

Use of emergency shelter grant amounts must comply with the following additional requirements:

(a) *Nondiscrimination and Equal Opportunity.* (1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 through 3619, and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2002d through 2000d–4) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(3) The requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60; and

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (see § 570.607(b) of this chapter); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business

enterprises in connection with activities funded under this part.

(6) The requirement that the recipient or grantee make known that use of the facilities and services is available to all on a nondiscriminatory basis. Where the procedures that a recipient or grantee intends to use to make known the availability of the ESG services are unlikely to reach persons of any particular race, color, religion, sex or national origin who may qualify for such services, the recipient or grantee must establish additional procedures that will ensure that these persons are made aware of the facility and services.

(7) The requirement of Executive order 12372 and the regulations issued under the order at 24 CFR Part 52, to the extent provided by Federal Register notice in accordance with § 52.3.

(b) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102, as they relate to the acceptance and use of emergency shelter grant amounts by States and units of general local government, and Nos. A–110 and A–112 as they relate to the acceptance and use of emergency shelter grant amounts by private nonprofit organizations.

(c) *Uniform Federal Accessibility Standards.* For major rehabilitation or conversion, the Uniform Federal Accessibility Standards at 24 CFR Part 40, Appendix A.

(d) *Lead-based paint.* The requirements as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 through 4846) and implementing regulations at 24 CFR Part 35.

(e) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circular A–102 and A–110, no person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, State recipient, or nonprofit recipient (or of any designated public agency) that receives emergency shelter grant amounts and who exercises or has exercised any functions or responsibilities with respect to assisted activities or (2) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. HUD may grant an exception to this exclusion as provided in § 570.611 (d) and (e) of this chapter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 4 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Flood insurance.* No site proposed on which renovation, major rehabilitation, or conversion of a building is to be assisted under this part, other than by grant amounts allocated to State, may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or less than a year has passed since FEMA notification regarding such hazards, and the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(h) *Audit.* The financial management system used by a State or unit of general local government that is a grantee or State recipient shall provide for audits in accordance with 24 CFR Part 44. A private nonprofit organization is subject to the audit requirements of OMB Circular A–110.

Subpart F—Grant Administration

§ 575.61 Responsibility for grant administration.

Grantees are responsible for ensuring that emergency shelter grant amounts are administered in accordance with the requirements of this part and other applicable laws. Thereafter, the grantee would be reimbursed for the amount of its actual cash disbursement. In the case of States making grant amounts available to State recipients, and in the case of units of general local government distributing grant amounts to nonprofit recipients, the States and the units of local government are responsible for ensuring that their respective recipients carry out the recipients' emergency shelter grant programs in compliance with all applicable requirements.

§ 575.63 Method of payment.

Payments are made to a grantee upon its request and may include a working capital advance for 30 days' cash needs or an advance of $5,000, whichever is greater. Thereafter, the grantee would be reimbursed for the amount of its actual cash disbursement needs. If a grantee requests a working capital advance, it must base the request on a realistic, firm estimate of the amounts required to be disbursed over the 30-day period in payment of eligible activity costs. Payments with respect to grants of $120,000, or more, will be made by letter of credit, if the grantee meets the requirements of OMB Circular A–102.

§ 575.65 Performance reports.

(a) *Interim performance report*—(1) *Timing of report.* (i) A metropolitan city or urban county must submit its interim performance report to HUD no later than 30 days after the end of the 180-day period allowed for the obligation of grant amounts under § 575.37(b), or 30 days after the date when all grant amounts are obligated, whichever comes first.

(ii) A State must submit its interim performance report not later than 90 days from the date of the State's distribution of funds to its units of general local government; except that where a HUD Area Office grants a State an extension of the 65-day deadline for obligating its grant funds, a corresponding extension for filing of the interim report will automatically be granted. A grantee receiving funds under § 575.41, Reallocation of funds, must submit its interim performance report to HUD within the period specified in its grant agreement.

(2) *Report content.* (i) In the case of a grantee other than a State, the interim performance report must contain information on the amount of funds obligated for each of the three categories of eligible activities described in § 575.21(a) (1), (2), and (3).

(ii) A State report must provide this information for each State recipient.

(3) *Matching funds certification.* A State grantee must submit with its interim performance report the matching funds certification required by § 575.33(b)(3)(i).

(b) *Annual performance report.*—(1) *Content.* A grantee other than a State must provide HUD with an annual performance report on the obligation and expenditure of funds for each of the three categories of eligible activities described in § 575.21(a) (1), (2) and (3). A State must provide this information for each State recipient.

(2) *Timing.* The initial annual performance report is required for the period ending December 31 following the submission of the interim report, and is due no later than 30 days after December 31. A grantee must continue to submit this report annually until all

emergency shelter grant amounts are reported as expended.

§ 575.67 Recordkeeping.

Each grantee and State recipient must maintain records necessary to document compliance with the provisions of this part.

§ 575.69 Sanctions.

(a) *HUD sanctions.* If HUD determines that a grantee is not complying with the requirements of this Part or of other applicable Federal law, HUD may (in addition to any remedies that may otherwise be available) take any of the following sanctions, as appropriate:

(1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;

(2) Condition a future grant;

(3) Direct the grantee to stop the incurring of costs with grant amounts;

(4) Require that some or all of the grant amounts be remitted to HUD;

(5) Reduce the level of funds the grantee would otherwise be entitled to receive; or

(6) Elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance.

(b) *State sanctions.* If a State determines that a State recipient is not complying with the requirements of this part or other applicable Federal laws, the State must take appropriate action which may include the actions described in paragraph (a) of this section. Any grant amounts that become available to a State as a result of a sanction under this section must, at the option of the State, be made available (as soon as practicable) to other units of general local government for use within the time periods specified in § 575.37(a)(2), or to HUD for reallocation under § 575.41.

(c) *Reallocations.* Any grant amounts that become available to HUD as a result of the imposition of a sanction under this section will be reallocated under § 575.41.

Date: October 9, 1987.

Nancy C. Silvers,

Acting General Deputy Assistant Secretary for Community Planning and Development.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-87-1737; FR-2416]

Emergency Shelter Grants Program; Use of Grant Amounts for Essential Services

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: Section 414(b) of the Emergency Shelter Grants program established by the Stewart B. McKinney Homeless Assistance Act authorizes the Department to waive the program requirement that limits to 15 percent, the amount of assistance under the Act that a unit of general local government may use for essential services in connection with emergency shelter for the homeless. The Department published a Notice on September 4, 1987, establishing requirements for the use of amounts authorized by the Act and appropriated by the Supplemental Appropriations Act, 1987. The Notice stated that HUD would not implement section 414(b) in the Notice, but only after notice and comment rulemaking.

This Notice informs the public that although section 414(b) will continue to be implemented in a separate rulemaking, the Department will consider requests for waivers of the 15 percent limitation under 24 CFR 575.5 in connection with grant amounts governed by the September 4 Notice. The Notice also specifies the criteria that will govern the disposition of waiver requests.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Don Patch, Director, Office of Block Grant Assistance, Room 7280, 451 7th Street SW., Washington, DC 20410, (202) 755-6487 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Discussion

On September 4, 1987, the Department published a Notice in the **Federal Register**, [1] announcing requirements for the allocation and use of amounts appropriated by the Supplemental Appropriations Act, 1987,[2] for the Emergency Shelter Grants program under Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act.[3] The Notice stated that as provided by the McKinney Act, these amounts are governed by (1) the proposed rule and program requirements for the Emergency Shelter Grants program [4] under Part C of the Homeless Housing Act of 1986,[5] and (2) the allocation and certain other provisions of the 1987 ESG program that could be implemented immediately under the program. The Department indicated its intent to implement the remaining features of the 1987 ESG program by notice and comment rulemaking. A final rule based on this proposal rule would be published by July 22, 1988, and would govern the 1987 program when it becomes effective.

One of the 1987 ESG provisions that the Department indicated would be implemented through notice and comment rulemaking was the waiver provision in section 414(b). Both the 1986 and 1987 ESG programs prohibit more than 15 percent of any grant amount received by a unit of general local government from being used for "essential services" in connection with emergency shelter for the homeless. Section 414(b) permits HUD to waive the 15 percent limit in the 1987 ESG program, if the local government receiving the assistance demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.

The Department continues to believe that under the terms of the statute, section 414(b) should be implemented by notice and comment rulemaking for the 1987 ESG program. The Department believes, however, that the substance of this provision can be implemented immediately, for amounts governed by the September 4, 1987 **Federal Register** Notice. As noted earlier, the September 4 Notice specified that the requirements of the 1986 ESG program (as modified by the Notice) govern the 1987 program, until a final rule for the 1987 program becomes effective. Section 575.5 of the proposed rule for the 1986 ESG program permits the Department to waive any non-statutory requirement of Part 575.

Whenever it is determined that undue hardship will result from applying the requirement, or where application of the requirement would adversely affect the ESG program's purposes.

Although section 414(b) was included in the 1987 ESG program, and not the 1986 program, the Department believes that it is inappropriate to ignore the clear congressional intent that units of general local government be relieved from the strictures of the 15 percent cap in certain circumstances for purposes of the 1987 program.[6] Therefore, the Department will entertain requests under § 575.5 from units of general local government to waive the 15 percent ceiling on "essential services" for the 1987 program.

In considering waiver requests, the Department will use the criteria contained in the Conference Report on section 414(b). Under this test, the unit of local government must demonstrate to HUD that:

> activities other than essential services are adequately provided from other public or private resources and that grant funds cannot practicably be used for eligible activities other than essential services. (H. Rep. No. 174, 100th Cong., 1st Sess. 76 (1987))

The Department believes that these criteria form an appropriate basis for waiver under § 575.5, and provide clear guidance to units of general local government seeking waiver relief.

Waiver requests from units of general local government receiving grant amounts from a State must first be forwarded to the State. The State must promptly forward all such requests to HUD, together with any recommendations or other comments it may have on them.

Conclusion

For purposes of grant amounts governed by the September 4, 1987, **Federal Register** Notice, the 15 percent limitation on the use of grant amounts for "essential services" will be administered as follows:

Not more than 15 percent of any grant amounts provided to a unit of general local government either as a grantee,[7] or

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[1] 52 FR 33790 (September 4, 1987).

[2] Pub. L. 100-71, approved July 11, 1987.

[3] Pub. L. 100-77, approved July 22, 1987. For ease of reference, this Notice refers to this program as the "1987 ESG program."

[4] 51 FR 45278 (December 17, 1986), adding a new 24 CFR Part 575.

[5] Section 101(g), Pub. L. 99-500 (approved October 18, 1986) and Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986). For ease of reference, this Notice refers to this program as the "1986 ESG program."

[6] It should be noted that this waiver authority only applies to amounts made available by the Supplemental Appropriations Act, 1987, for the 1987 ESG program. It does not apply to amounts appropriated for the 1986 ESG program.

[7] See 24 CFR 575.3 for the definition of these terms.

as a State recipient,[7] including grant amounts that the unit of government distributes to any nonprofit recipient,[7] may be used for essential services, except that HUD may waive this 15 percent limitation if the unit of government demonstrates to HUD that activities other than essential services are adequately provided from other public or private resources and that grant funds cannot practicably be used for eligible activities other than essential services. Waiver requests from State recipients [7] must first be sent to the State. The State must promptly send the requests to HUD, together with any comments or recommendations the State may have on them.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520). When OMB has approved these requirements, HUD will announce any applicable control number in a **Federal Register** Notice.

The Catalog of Federal Domestic Assistance program number is 14.231.

Authority: Sec. 416 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987); and sec. 7(d) of the Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Dated: October 9, 1987.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 87-24104 Filed 10-16-87; 8:45 am]

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Federal Register

Monday
October 19, 1987

Part V

Department of Housing and Urban Development

Supplemental Assistance for Facilities to Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N-87-1746; FR-2389]

Supplemental Assistance for Facilities to Assist the Homeless; Program Guidelines and Notice of Funds Availability

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Program Guidelines and Notice of Funds Availability.

SUMMARY: This Notice announces HUD's guidelines for the operation of a program of Supplemental Assistance for Facilities to Assist the Homeless (SAFAH). This program was authorized by Title IV, Subtitle D, of the Steward B. McKinney Homeless Assistance Act. Under the program, HUD is authorized to provide: (1) Assistance to cover the costs in excess of assistance provided under the Emergency Shelter Grants and the Supportive Housing Demonstration programs that are required to meet the special needs of certain homeless populations or to facilitate the transfer and use of public buildings to assist the homeless; or (2) comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of the homeless. Under SAFAH, HUD will provide assistance in the forms of non-interest bearing advances to assist the acquisition, lease, substantial rehabilitation, or conversion of facilities to assist the homeless; grants for moderate rehabilitation; and grants for other purposes. This notice also announces the availability of $15 million in funds appropriated for the program by the Supplemental Appropriation Act, 1987.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Division of Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8112, Washington, DC 20410, telephone (202) 755-5537. Hearing or speech impaired individuals may call HUD's TDD number (202) 426-0015.

For information on supplemental assistance related to the Emergency Shelter Grants program, contact: James R. Broughman, Director, Entitlement Cities Division, at the above address, telephone (202) 755-5977, or James Forsberg, Director, Small Cities Division, at the above address, telephone (202) 755-6322.

For information on supplemental assistance related to the Supportive Housing Demonstration program, contact: Lawrence Goldberger, Director, Office of Elderly and Asisted Housing, at the above address, telephone (202) 755-5720.

For information on Comprehensive Homeless Assistance Plans and the requirement that proposed SAFAH activities be consistent with the Plans, contact: James R. Broughman, at the above address and telephone number.

The telephone numbers listed above are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Supplemental Assistance for Facilities to Assist the Homeless

Background

Subtitle D of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) ("McKinney Act") authorized a program of Supplemental Assistance for Facilities to Assist the Homeless (SAFAH). Under this program, HUD is authorized to provide:

(a) Assistance to cover the costs in excess of assistance provided under the Emergency Shelter Grants (ESG) program and the Supportive Housing Demonstration (SHD) program that are required: (1) To meet the needs of homeless families with children, elderly homeless individuals, or the handicapped; or (2) to facilitate the transfer and use of public buildings to assist homeless individuals and families; or

(b) Comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals and families by assisting: (1) The purchase, lease, renovation, or conversion of facilities to assist the homeless; or (2) the provision of supportive services for homeless individuals.

Under the program, HUD is authorized to provide assistance in the forms of

non-interest bearing advances to assist the acquisition, lease, substantial rehabilitation, or conversion of facilities to assist the homeless; grants for moderate rehabilitation; and grants for other purposes. The Supplemental Appropriations Act, 1987 (Pub. L. 100–71, approved July 11, 1987), appropriated $15 million for grants for SAFAH. This Notice announces the guidelines that will govern the operation of SAFAH, and announces the availability of funds under the program.

Procedural Implementation

Section 433 of the McKinney Act contains the following implementation requirements for SAFAH:

(a) HUD must establish by Notice the requirements to govern SAFAH, within 30 days of the date of enactment of the McKinney Act (August 21, 1987). These requirements are not subject to the notice and comment rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553) or the legislative review positions of section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o));

(b) HUD must publish a Notice of Funds Availability for SAFAH within 30 days of the date on which amounts become available for SAFAH (September 20, 1987);

(c) Applications for SAFAH must be submitted not later than 60 days after publication of the NOFA (November 19, 1987); and

(d) HUD must complete the final selection of applications for SAFAH not later than 90 days after publication of the NOFA (December 19, 1987).

The Department has been unable to meet SAFAH's deadlines for publication of the Notice establishing SAFAH's requirements and of the Notice of Funds Availability. In light of the necessity to ensure the prompt award and use of SAFAH appropriations, the Department will use the following timetable:

(1) This Notice will serve both to establish SAFAH's requirements and to announce the availability of funding under the program;

(2) Applications will be due by December 3, 1987;

(3) HUD will make final SAFAH selections by December 23, 1987: 20 days after the application deadline.

The Department believes that these timeframes will permit adequate time for the submission and review of applications, while at the same time calling for the award and use of funds in approximately the overall timeframes contemplated by section 433 of the McKinney Act.

Guidelines

A. Definitions

The following definitions apply to SAFAH:

Applicant. (a) Applicant means a State, metropolitan city, urban county, tribe, or private nonprofit organization that submits an application for assistance under SAFAH. Applicant includes two or more of these entities that submit a joint application.

(b) Applicants may submit applications on behalf of other entities that will operate facilities to assist the homeless, only in the following circumstances:

(1) A State may submit an application on behalf of: (1) A private nonprofit organization to carry out SAFAH activities in the State; or (ii) any governmental entity in the State, other than an ESG formula city or county or a tribe,

(2) A metropolitan city or urban county may submit an application on behalf of: (i) A private nonprofit organization to carry out SAFAH activities in the city or county; or (ii) any governmental entity in the city or county, other than an entity that is an applicant under paragraph (a),

(3) A tribe may submit an application on behalf of a private nonprofit organization to carry out SAFAH activities for the tribe,

(4) A private nonprofit organization may submit an application on behalf of another private nonprofit organization to carry out SAFAH activities. The threshold and ranking criteria for applicants submitting applications on behalf of other entities are set forth in sections E.2. and 3. below.

(c) As described below, one of the SAFAH funding categories involves assistance in excess of ESG or SHD program funding. SAFAH assistance under this category may only be made available in connection with:

—A project that has been approved for, or has received, funding under the ESG or SHD program;

—A project for which an application for ESG or SHD funding has been submitted, and the application either is presently pending or has been denied funding; or

—A project for which assistance is sought to acquire property to be used for shelters for homeless families with children.

Any applicant may apply for SAFAH assistance, and carry out assisted activities in connection with the acquisition of property for use as shelters for homeless families with children.

For SAFAH assistance in connection with ESG or SHD projects that have been funded or for which an application for ESG or SHD funding has been submitted, an applicant may apply for SAFAH funding only if the applicant is eligible: (1) To apply to HUD for assistance under the ESG or SHD program; or (2) to carry out activities with ESG or SHD assistance. Thus, for SAFAH assistance in connection with such projects:

—States may apply for SAFAH assistance, and carry out assisted activities, in connection with: (1) An ESG project, even though the State is not eligible to carry out activities under the ESG program; (2) a permanent housing project, even though the State is not eligible to carry out activities as a "project sponsor" under this program; and (3) a transitional housing project.

—An ESG formula city or county may apply for SAFAH assistance, and carry out assisted activities, in connection with projects under the ESG program or the transitional housing program. Since ESG formula cities and counties are not eligible to apply for or carry out activities under the permanent housing program, they may not apply for or receive SAFAH assistance in connection with that program.

—A metropolitan city or urban county that is not an ESG formula city or county may apply for SAFAH assistance, and carry out assisted activities, in connection with: (1) An ESG project, even though the city or county may not apply directly to HUD for ESG funding; or (2) a transitional housing project. A metropolitan city or urban county may not apply for assistance in connection with a permanent housing project, since such cities and counties may not apply for assistance or carry out activities under that program.

—Private nonprofit organizations may apply for SAFAH assistance and carry out assisted activities in connection with: (1) An ESG program, irrespective of whether the organization applied directly to HUD for the assistance; (2) a transitional housing project; and (3) a permanent housing project.

—Tribes may apply for assistance in connection with a transitional housing project. Tribes may not apply for assistance with respect to projects assisted in connection with the ESG program or the permanent housing program, since tribes are

ineligible to apply for or receive assistance under those programs.

Application for ESG or SHD funding has the following meaning for SAFAH applicants:

(a) In the case of States, an application to HUD for funding under the ESG or SHD program.

(b) In the case of ESG formula cities and counties, an application to HUD for funding under the ESG or transitional housing program.

(c) In the case of metropolitan cities and urban counties that are not ESG formula cities or counties, an application (i) To Hud for funding under the transitional housing program or (ii) to the State for funding under the ESG program.

(d) In the case of private nonprofit organizations, an application: (i) To Hud for reallocated amounts under the ESG program or for funding under the transitional housing program; (ii) to a unit of general local government for funding under the ESG program; or (iii) to the State for funding under the permanent housing program.

(e) In the case of tribes, an application to HUD for funding under the transitional housing program.

Assistance means (a) non-interest bearing advances to assist the acquisition, lease, substantial rehabilitation, or conversion of facilities to assist the homeless; (b) grants for moderate rehabilitation; and (c) grants for other purposes.

Comprehensive Homeless Assistance Plan or *Plan* means the Comprehensive Homeless Assistance Plan established by Subtitle A of Title IV of the McKinney Act.

Elderly homeless individual means a homeless individual who is 62 years of age or older. This term includes a homeless family, if the head of the family (or the spouse of the head of the family) is an elderly homeless individual.

Emergency Shelter Grants program or *ESG program* means the homeless assistance program established by Subtitle B of Title IV of the McKinney Act or Part C of the Homeless Housing Act of 1986.

ESG formula city or county means a metropolitan city or urban county that is eligible to receive a formula allocation under the Emergency Shelter Grants program.

Facilities designed primarily to benefit homeless elderly individuals and homeless families with children means facilities to assist the homeless, in which more than 50 percent of the homeless to be served are either homeless elderly individuals or homeless families with children.

Facilities to assist the homeless means one or more existing structures, or parts of one or more existing structures, owned or leased for use in connection with SAFAH.

Handicapped or *handicapped person* means any individual having an impairment that is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that the ability to live independently could be improved by a stable residential situation. This term includes:

(a) An individual who is developmentally disabled, *i.e.*, an individual who has a severe chronic disability that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(b) An individual who is chronically mentally ill, *i.e.*, an individual who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (*e.g.*, by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, or recreation), and whose impairment could be improved by more suitable housing conditions.

(c) A handicapped person who also suffers from alcoholism or drug addiction.

This term includes a homeless family, if the head of the family (or the spouse of the head of the family) is a handicapped person.

HHS means the Department of Health and Human Services.

Homeless means:

(a) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(b) An individual or family that has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

Homeless family with children means a homeless family that includes at least one parent, and one child under the age of 18.

Homeless Housing Act of 1986 means title V of section 101(g), Pub. L. 99–500 (approved October 18, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986)).

HUD means the Department of Housing and Urban Development.

McKinney Act means the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987).

Metropolitan city means a city that is classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974. In general, metropolitan cities are those cities that are eligible for an entitlement grant under 24 CFR Part 570, Subpart D.

Moderate rehabilitation means the rehabilitation of facilities to assist the homeless involving a total HUD expenditure that does not exceed the lower of:

(a) $100,000; or

(b) The project limit. The project limit is the amount determined by HUD by multiplying the number of units of each unit type in the facilities times the unit cost for that unit. The cumulative total for all unit types is the project limit. The unit cost limits are:

(1) $5,000 (i) per bedroom unit, in single room occupancy housing (*i.e.*, a unit which contains no sanitary facilities or food preparation facilities, or which contains one but not both types or facilities, and which is suitable for occupancy by a single individual); (ii) per bedroom unit, in a group home; or (iii) per unit without a bedroom, in other types of facilities; and

(2) $7,000 per unit with one or more bedrooms, in other types of facilities.

Outpatient health services means:

(a) Outpatient health care (including on-site health screening and evaluation, diagnostic services, health status monitoring, medication dispensing and

monitoring, and referral and follow-up for health services);

(b) Outpatient mental health services (including mental health screening and diagnosis, evaluation of treatment needs, prescription and medication management, individual and group counseling, and referral and follow-up);

(c) Outpatient substance abuse services (including alcohol and drug abuse evaluation and counseling, coordination and referral to appropriate substance abuse services, and monitoring of clients); and

(d) Case management services (including coordination with existing services and referral and tracking of client progress).

Permanent housing means the component of the SHD program that authorizes assistance for permanent housing for handicapped homeless persons.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(a) Have a voluntary board;

(b)(i) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or (ii) designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(c) Practice nondiscrimination in the provision of assistance under SAFAH in accordance with the authorities described in section F.6.(i), below.

Project means (a) facilities to assist the homeless; or (b) any activities eligible under SAFAH that the applicant proposes in its application and HUD approves for SAFAH funding.

Recipient means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD to provide assistance to the homeless under SAFAH.

Rehabilitation means labor, materials, tools, and other costs of improving structures to a level that meets or exceeds applicable State and local government health and safety standards. Rehabilitation includes repairs directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, and improvement through alterations or additions to, or enhancement of, existing structures, including improvements to increase the efficient use of energy in structures. Rehabilitation does not include minor or routine repairs or cosmetic repairs or improvements.

SAFAH or *program* means the program of Supplemental Assistance for Facilities to Assist the Homeless established by Subtitle D of Title IV of the McKinney Act.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Substantial rehabilitation means the rehabilitation of facilities to assist the homeless that involves a total HUD expenditure in excess of the moderate rehabilitation limitations.

Supportive Housing Demonstration program or *SHD program* means the homeless assistance program established by Subtitle C of Title IV of the McKinney Act. This term includes transitional housing and permanent housing.

Supportive services includes:

(a) Food;

(b) Child care;

(c) Assistance in obtaining permanent housing;

(d) Outpatient health service;

(e) Employment counseling;

(f) Nutritional counseling;

(g) Security arrangements necessary for the protection of residents of facilities to assist the homeless;

(h) Assistance in obtaining other Federal, State, and local assistance available to the homeless, including mental health benefits; employment counseling; medical assistance; Veterans' benefits; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and

(i) Other services proposed by the applicant in its application and approved by HUD, that are essential for maintaining independent living and that address the needs of the homeless to be served. These services may include drug and alcohol abuse programs and job training. Supportive services do not include major medical equipment.

Transitional housing means the Transitional Housing Demonstration program established by Part B of the Homeless Housing Act of 1986 and the component of the SHD program that authorizes assistance for transitional housing.

Tribe means an Indian tribe, band, group or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaska Native Village, of the United States, considered an eligible recipient under the Indian Self Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512).

Urban county means a county that is classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974. In general, urban counties are those counties that are eligible for an entitlement grant under 24 CFR Part 570, Subpart D.

B. Assistance Provided

1. Categories of Assistance

Section 432(a) authorizes HUD to provide assistance under SAFAH in the following two categories: Comprehensive assistance and assistance in excess of ESG and SHD program funding. These two funding categories are discussed below.

(i) *Comprehensive assistance.*

(a) General. Assistance will be available under this funding category to provide comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals and families, by assisting: (a) The purchase, lease, rehabilitation, or conversion of facilities to assist the homeless; and (b) the provision of supportive services for homeless individuals. The purpose of this aspect of SAFAH is to stimulate the development and implementation of innovative, community-based, comprehensive efforts to respond to the problems of homeless individuals and families. (See section 432(a)(2) of the McKinney Act.)

(b) Types of assistance available. HUD will offer assistance under this funding category in the forms of:

—Advances to assist in the acquisition, lease, substantial rehabilitation, or conversion of facilities. HUD will advance sums to recipients to defray the costs of acquisition, lease, substantial rehabilitation, or conversion of structures selected by the recipients for use as facilities to assist the homeless. Advances are interest-free, and if the conditions described in section F.4., below are met, are not subject to repayment. The sale or disposition of facilities purchased, leased, substantially rehabilitated, or converted with an advance is subject to the requirements of section F.5., below.

—Grants for moderate rehabilitation. HUD will make grants to recipients to defray the cost of moderate rehabilitation of structures selected

by the recipients for use as facilities to assist the homeless. The sale or disposition of facilities rehabilitated with a grant under this paragraph are subject to the requirements of section F.5., below.

—Grants for supportive services. HUD will make grants to recipients to defray the cost of providing those supportive services proposed by the recipients in their application and approved by HUD.

(c) Selection process. The selection process for comprehensive assistance applications is described in section E.2., below.

(ii) *Assistance in excess of ESG and SHD program funding.*

(a) General. Under the second funding category, assistance will be available to cover costs in excess of assistance provided under the ESG and SHD programs that are required to meet the special needs of homeless families with children, elderly homeless individuals, or the handicapped; or to facilitate the transfer and use of public buildings to assist homeless individuals and families. One of the purposes of this funding is to compensate for programmatic rigidities in the ESG and SHD programs by providing appropriate assistance supplementing these two programs. (See section 432(a)(1) of the McKinney Act.)

(b) Types of ESG and SHD programs. SAFAH assistance under this category of funding may only be made available in connection with:

—A project that has been approved for, or has received, funding under the ESG or SHD program;

—A project for which an application for ESG or SHD funding has been submitted, and the application either is presently pending or has been denied funding (A SAFAH application that requests assistance in connection with an ESG or SHD application that is pending, or that has been denied funding, will be evaluated under the threshold and ranking criteria set forth in sections E.2. and E.3., below, without regard to the proposed ESG or SHD program.); or

—A project for which assistance is sought to acquire property to be used for shelters for homeless families with children. HUD believes that the funding of such projects under SAFAH will address a major programmatic rigidity of the ESG and SHD programs.

(c) Types of assistance available. HUD will offer assistance under this funding category in the forms of:

—Advances to assist in the acquisition, lease, substantial rehabilitation, or conversion of facilities. HUD will advance sums to recipients to defray the costs of acquisition, lease, substantial rehabilitation, or conversion of structures selected by the recipients for use as facilities to assist the homeless. Advances are interest-free, and if the conditions described in section F.4., below are met, are not subject to repayment. The sale or disposition of facilities purchased, leased, substantially rehabilitated, or converted with an advance is subject to the requirements of section F.5., below.

—Grants for moderate rehabilitation. HUD will make grants to recipients to defray the cost of moderate rehabilitation of structures selected by the recipients for use as facilities to assist the homeless. The sale or disposition of facilities rehabilitated with a grant under this paragraph is subject to the requirements of section F.5., below.

—Grants for other purposes. HUD will make grants to recipients to defray the costs of such other activities that are requested in the recipient's application and approved by HUD as necessary to meet the special needs of homeless families with children, elderly homeless individuals, or the handicapped; or to facilitate the transfer and use of public buildings to assist homeless individuals and families.

(d) Selection process. The selection process applicable for applications for assistance in excess of ESG and SHD program funding is described in section E.3., below.

2. Limitations on the Amount of Assistance

As noted above, the fiscal year 1987 appropriation for the SAFAH program is $15 million. To ensure that assistance will be available to a reasonable number of applicants, HUD has imposed a maximum SAFAH grant award of $1 million per recipient. HUD has not imposed any minimum limitation on the size of the grant.

3. Limitations on the Use of Assistance

(i) *Funding of existing facilities or services.* SAFAH funds may only be used to provide new facilities or services for the homeless, to expand existing facilities serving the homeless, or to provide services in addition to those currently provided to the homeless.

(ii) *Primarily religious organizations.* (a) Direct assistance. (1) HUD will not provide direct assistance to primarily religious organizations to purchase, rehabilitate, or convert facilities to assist the homeless.

(2) HUD may provide direct funding to a primarily religious organization for other purposes, if the organization agrees to provide facilities and supportive services in a manner that is free from religious influences and in accordance with other conditions described in the grant agreement.

(b) Assistance to a wholly secular private nonprofit organization established by a primarily religious organization. (1) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. This wholly secular organization may be eligible to receive all forms of assistance available under SAFAH.

—The wholly secular organization must agree to provide assistance to the homeless in a manner that is free from religious influences and in accordance with other terms described in the grant agreement.

—The wholly secular organization may enter into a management contract with the primarily religious organization to operate facilities to assist the homeless, including the provision of supportive services. In such a case, the primarily religious organization must agree in the management contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with conditions prescribed by HUD.

—Assistance provided to the wholly secular organization to purchase, rehabilitate, or convert facilities to assist the homeless are subject to the requirements of section B.3.(ii)(c), below.

(2) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of its application. In such a case, the primarily religious organization may apply on behalf of the wholly secular organization. The application will be reviewed on the basis of the primarily religious organization's financial responsibility, commitment to alleviating poverty, capacity, its commitment to provide appropriate resources to the wholly secular organization after formation, its operating assurances and past reasonable efforts to utilize available resources. (see the threshold and ranking criteria described at sections E.2. and 3., below.) Additionally, the primarily religious organization must

demonstrate site control under sections E.2.(i)(b)(3)(*c*) and E.3.(i)(b)(4)(*c*) and a commitment to transfer control of the site to the wholly secular organization after its formation. Since the wholly secular organization will not be in existence at the time of the application, it will be required to demonstrate that it meets the definition of private nonprofit organization and has the appropriate legal authority to participate in the program following selection. If such an application is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

(c) Facilities to assist the homeless owned by a primarily religious organization. HUD will not provide assistance to rehabilitate or convert facilities to assist the homeless that are owned by a primarily religious organization, unless:

(1) The structure (or portion of the structure) that is to be rehabilitated or converted with the HUD assistance has been leased to a recipient that is a wholly secular organization.

(2) The HUD assistance is provided to the recipient to make the improvements, rather than to the primarily religious organization;

(3) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion;

(4) The lease payments provided to the primarily religious organization do not exceed the fair market rent of the structure without the rehabilitation;

(5) The cost of improvements that benefit the portion of the structure that is not leased by the recipient for use in the program will be allocated to and paid for by the primarily religious organization; and

(6) The primarily religious organization agrees that if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the recipient and the recipient will remit the amount to HUD.

(iii) *Structures used for multiple purposes.* Facilities assisted under SAFAH may also be used for other purposes. For example, a structure may contain facilities for outpatient health care and may also be used to provide services to the public at large or include commercial space. Under these circumstances, however, assistance under SAFAH will be available only in proportion to the use of the facilities to assist the homeless. No assistance may be used to support the costs of the facility that are not related to providing approved assistance to the homeless.

(iv) *Administrative costs.* No more than five percent of a grant or an advance made under SAFAH may be used for administrative expenses.

(v) *Outpatient health services.* Outpatient health services must be provided in compliance with guidelines developed by HHS and HUD (see section E.4., below). Not more than $10,000 of any grant or advance under SAFAH may be used for outpatient health services. This limitation does not apply to amounts expended for the rehabilitation or conversion of facilities to assist the homeless that are used to provide outpatient health services.

(vi) *Maintenance of effort.* SAFAH assistance may not be used to supplant any non-Federal resources provided with respect to any project. For purposes of this clause, non-Federal resources means resources provided from any source other than the Federal government. Community Development Block Grants under title I of the Housing and Community Development Act of 1974 are non-Federal resources.

4. Overall use of assistance.

Section 423(d) of the McKinney Act requires HUD, to the maximum extent practicable, to reserve not less than 50 percent of SAFAH funds for the support of facilities designed primarily to benefit homeless elderly individuals and homeless families with children. This provision also requires that a portion of SAFAH funds be used for child care facilities. HUD will implement these requirements by taking one or all of the following actions, to the extent HUD determines such action is necessary to comply with section 432(*d*): (1) Awarding points in the ranking step to applications that meet the SAFAH threshold requirements and that propose these types of facilities (see sections E.2.(ii) and 3.(ii); (2) augmenting the pool of applications selected by HUD for environmental review with applications that meet the SAFAH threshold requirements and that propose these types of facilities (see sections E.2.(iii) and 3.(iii)); and (3) selecting for funding applications that propose these activities and that have reached the final selection step, but are less highly ranked than applications that do not propose these facilities.

C. Comprehensive Homeless Assistance Plan

1. Prohibition of Assistance

Assistance under SAFAH may not be provided to, or within the jurisdiction of, a State or an ESG formula city or county, unless the jurisdiction has a HUD-approved Comprehensive Homeless Assistance Plan.

2. Who Must Have an Approved Plan

The requirements described in paragraph C.1. of this section apply to SAFAH applicants as follows:

—If the applicant is a State, the State must have an approved Plan.

—If the applicant is an ESG formula city or county, the city or county must have an approved Plan.

—If the applicant is a metropolitan city or urban county that is not an ESG formula city or county, the State in which the facilities to assist the homeless are to be located must have an approved Plan.

—If the applicant is a private nonprofit organization and the facilities to assist the homeless are to be located within the jurisdiction of an ESG formula city or county, the city or county must have an approved Plan, or if the ESG formula city or county does not have an approved Plan, the State must have an approved Plan.

—If the applicant is a private nonprofit organization and the facilities to assist the homeless are to be located outside the jurisdiction of an ESG formula city or county, the State must have an approved Plan.

3. Tribes

Assistance may be provided to, or within the jurisdiction of, a tribe without a HUD-approved Comprehensive Homeless Assistance Plan.

4. Notification of Plan Requirements

On August 14, 1987 (52 FR 30628), HUD published the requirements that pertain to the Comprehensive Homeless Assistance Plan. Prospective applicants should familiarize themselves with these requirements.

D. Application Process

1. General

To be considered for funding, the original and two copies of the application must be received at the first address set forth in the beginning of this document no later than 5:15 p.m. (e.s.t.), December 3, 1987.

HUD headquarters will process all applications and select the successful applications. HUD will make its final selections as soon as the applications can be processed, but no later than December 23, 1987.

2. Application Content Requirements

HUD will not provide an application package for this program. The minimum application content requirements for

comprehensive assistance applications and applications seeking assistance in excess of ESG and SHD program funding are set forth as an appendix to this Notice.

E. Selection Process

1. Overview

The selection process will have two separate stages: a review of applications seeking comprehensive assistance, and a review of applications seeking assistance in excess of ESG and SHD program funding. Each stage will consist of multiple steps.

In the first stage of the selection process, HUD will review all applications seeking comprehensive assistance. HUD will review each of these applications to determine if it meets all of the threshold criteria announced under section E.2.(i), below. If a comprehensive assistance application does not meet all of the threshold requirements, it will not be selected for comprehensive assistance funding. Comprehensive assistance applications that meet all of the threshold criteria will advance to the ranking step.

During the ranking step, HUD will evaluate each application for comprehensive assistance under the ranking criteria described in section E.2.(ii), below. Ranked applications will be placed in order, based on the overall points awarded to them under the ranking factors.

After the completion of the ranking, HUD will perform an environmental review on the number of highly ranked applications that HUD considers necessary to provide an adequate pool of applications to ensure that the entire available amount under SAFAH can be committed to applications for comprehensive assistance. HUD may augment the pool of highly ranked applications with ranked applications that propose facilities designed primarily to benefit homeless elderly individuals and homeless families with children, or that propose child care facilities, if HUD determines that this is necessary to comply with section 432(d) of the McKinney Act. If the amount of funding requested in the ranked applications is not sufficient to ensure that all program funds will be committed to applications for comprehensive assistance, HUD will perform an environmental review for *all* ranked applications. The environmental review will be performed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. During the environmental review, HUD will determine if an application requires the preparation of an Environmental Impact Statement (EIS). Additionally, HUD may make adjustments to the rating scores based on facts disclosed during the environmental review. If an application requires the preparation of an EIS or if HUD does not perform an environmental review on an application because of its low ranking, the application will be ineligible for funding.

In the final step of the review of the comprehensive assistance applications, HUD will consider for final selection, the applications that advance from the environmental review step, with any rating adjustment made on the basis of the environmental review. HUD will fund the highest ranked applications, but reserves the right to fund other applications that successfully completed the third step, if necessary: (i) To assure geographic diversity; or (ii) to support facilities designed primarily to benefit homeless elderly individuals and homeless families with children, and child care facilities. (Under section 432(d) of the McKinney Act, HUD is required, to the maximum extent practicable, to reserve not less than 50 percent of all SAFAH funds for facilities, with a portion of the funds used for child care facilities.)

HUD may use the services of an outside panel of individuals with expertise in housing matters during the final selection step. If such a panel is utilized, the panel would consider all applications that advance from the environmental review step and would make recommendations for funding to the Secretary. The Secretary would consider the panel's recommendations in making the final selection of applications.

If all program funds are not committed to applications for comprehensive assistance during the first (comprehensive assistance) stage of the selection process, HUD will consider applications seeking assistance in excess of ESG and SHD program funding. If such applications are considered, HUD will conduct a four-step review similar to the review performed on the applications for comprehensive assistance. (*I.e.*, The four-step review will consist of threshold review, ranking, environmental review, and final selection). The threshold, ranking, and final selection factors used to evaluate applications seeking assistance in excess of ESG and SHD program funding, however, will differ from those used to evaluate comprehensive assistance applications (see sections E.3.(i) and (ii), below.

2. Comprehensive Assistance

(i) *Threshold requirements.*

(a) General. (1) To be eligible for evaluation under the ranking criteria set out in section E.2.(ii), applications must meet each of the following threshold criteria (as modified for wholly secular private nonprofit organizations established by a primarily religious organization under section B.3.(ii), above).

(2) If HUD determines that an application fails to meet the threshold criteria in section E.3. related to site control and zoning, that these are the only deficiencies in the application under the threshold criteria, and that the deficiencies are correctable, HUD may contact the applicant, identify the deficiencies, explain how the deficiencies can be corrected, and require the applicant to correct the deficiencies. HUD will establish a deadline for the submission of the additional site control and zoning information that will permit the Department to meet its deadlines for final selection.

(3) Applications that fail to meet the threshold criteria, including those that have not been corrected within any additional time provided by HUD, will not be eligible for SAFAH funding.

(b) Threshold criteria.

(1) Contents, time and adequacy of the application. The application must be filed within the time periods established by HUD in this Notice, must include all required elements, and contain evidence or information sufficient to support each of its elements. (See application contents requirements described in the appendix.)

(2) Applicant.

(*a*) Eligibility to receive assistance. The applicant must demonstrate that it is a State, a metropolitan city, an urban county, a tribe, or a private nonprofit organization. If the applicant is submitting an application on behalf of another entity, the applicant must demonstrate that both the applicant and the other entity are eligible to participate in SAFAH, as provided in the definition of applicant under section A., above.

(*b*) Financial responsibility. HUD has determined, for purposes of this program, that all governmental entities, including tribes, are financially responsible. Any private nonprofit organization applying for assistance (or on behalf of which an application is submitted) must demonstrate its financial responsibility. In making its determination of financial responsibility, HUD will consider such factors as the

past financial history of the organization, its current and anticipated financial outlook, the amount of funding that will be committed under the proposal, and the organization's other financial responsibilities.

(c) Commitment to alleviating poverty. Each applicant must show a commitment to alleviating poverty. In determining whether the applicant fulfills this threshold criterion, HUD will consider the applicant's past efforts and its continuing commitment to serve lower income persons, and in the case of a private nonprofit organization, whether the applicant's organizational objectives foster service to such persons. (Evidence of organizational objectives may be contained in the applicant's charter, bylaws, articles of incorporation, mission statements, minutes of its governing body, or other organizational documents.)

(d) Capacity. Each applicant must demonstrate that the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) has the continuing ability to effectively provide assistance to homeless individuals. Under this criterion, the applicant must demonstrate that the applicant (or the entity) is able to initiate proposed activities within a reasonable time after execution of a grant agreement with HUD and in a successful manner, and to continue to carry out the proposed activities throughout the term of the proposed commitment to HUD in a successful manner. In determining whether the application meets this threshold criterion, HUD will consider the applicant's (or the other entity's) experience in establishing and operating facilities to assist the homeless or in providing or coordinating supportive services. HUD also will consider the ability of the applicant's (or the other entity's) personnel to perform administrative, managerial, and operation functions necessary to the successful development and operation of facilities to assist the homeless.

(e) Legal authority. Each applicant must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) has the legal authority to participate in the program and to carry out activities in accordance with SAFAH requirements and the requirements of other applicable Federal law; and must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by the governing body of the applicant (and the other entity) authorizing the submission of the application under SAFAH.

(3) Proposed facilities and supportive services.

(a) Need. The applicant must demonstrate that an unmet need for the proposed facilities and supportive services exists in the area to be served, and that this need is likely to continue through the term of the proposed commitment to HUD. Applicants should use relevant information contained in the Comprehensive Homeless Assistance Plan to demonstrate need.

(b) Appropriateness of the proposed facilities. If the application seeks assistance to acquire, lease, rehabilitate, or convert facilities to assist the homeless, the applicant must demonstrate that the proposed structures and sites are appropriate for the provision of facilities or supportive services for the homeless population proposed to be served. In determining whether facilities will be suitable for the provision of supportive services, HUD will consider whether the structure is designed to permit the provision of proposed on-site supportive services, and whether any proposed off-site supportive services are readily accessible.

(c) Siting and zoning. Except as provided in section E.2.(i)(a)(2) above, if the application seeks assistance to acquire, lease, rehabilitate or convert facilities to assist the homeless, the application must meet the following siting and zoning requirements at the time of application:

—The applicant must demonstrate that the applicant (or in the case of an applicant that submits an application on behalf of another entity, the other entity) has control on the site involved. For example, the applicant may demonstrate that it (or the other entity) owns or has an option to purchase, or leases or has an option to lease, the structure involved;

—The applicant must deomonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within 30 days following the selection of the application for funding;

—The applicant must submit a statement that the proposed project is not located in any 100-year floodplain, as designated by maps prepared by the Federal Emergency Management Agency (FEMA). If 50 percent or more of the living space in the structure is designed for residents with mobility impairments, the applicant must submit a statement that the project is not located in any 500-year floodplain, as designated on FEMA maps.

The applicant must meet one of the following requirements with respect to historic preservation:

—The applicant may provide a letter from the State Historic Preservation Officer (SHPO) indicating that the facility to be funded under SAFAH will not involve an historic property as defined in 36 CFR 800.2 (*i.e.*, an historic or prehistoric district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places) and will not involve a structure that is immediately adjacent to an historic property that is listed on the Register;

—If the facilities involve an historic property that is included in or eligible for inclusion in the Register or is immediately adjacent to an historic property that is listed on the Register, the applicant may demonstrate that the SHPO has agreed to the proposed use of the property and to measures to avoid or reduce any adverse effects of such use; or

—The applicant may demonstrate that an environmental review of the area in which the proposed facilities are to be located: (1) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58; and (ii) addressed properties, activities, and effects comparable to those proposed for assistance under SAFAH. (If HUD finds that the prior review applies to the proposed activities, this threshold requirement will be met.)

(4) Operating assurances. If the application involves assistance to acquire, lease, rehabilitate, or convert facilities to assist the homeless, the applicant must demonstrate, in the form of assurances acceptable to HUD, that the facility will be operated to assist the homeless for a term of not less than 10 years from the date of initial occupany.

(5) Innovation. The applicant must demonstrate that the proposal involves a particularly innovative program for, or alternate method of meeting the immediate and long-term needs of

homeless individuals and families. HUD will consider whether the proposal uses a new or unusual approach that holds promise of successfully providing a program that will meet the immediate and long-term needs of homeless individuals or families.

(6) Reasonable efforts. The applicant must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) have made reasonable efforts to use all available local resources, including State and local government funding (*e.g.*, Community Development Block Grant funds), resources available from the private sector, and resources available under Title IV of the McKinney Act (the ESG program, the SHD program, and the Section 8—Moderate Rehabilitation program for Single Room Occupany Dwellings authorized under Subtitle E). The application must also demonstrate that these other resources are not sufficient or are not available to carry out the purpose for which the assistance is being sought.

In determining whether reasonable efforts have been made to obtain McKinney Act funds, the applicant must show that either the applicant (and the other entity) or the proposed activities are ineligible for funding under the requirements of the described programs; or if the proposed activities are eligible for funding under one or more of the programs, that the applicant (and the other entity) sought and were not granted sufficient funding under the programs as of the SAFAH application submission date.

In considering whether reasonable efforts have been made to use local resources, HUD will consider such factors as fund-raising activities undertaken by the applicant (and the other entity), and any requests for assistance for available funds made by the applicant (and the other entity) to State or local governments or private entities, such as charitable organizations or private businesses.

(7) Consistency with Comprehensive Homeless Assistance Plan. Applicants must provide a certification from the public official responsible for submitting a Comprehensive Homeless Assistance Plan for the appropriate jurisdiction (as described under section C.2. above), stating that the proposed activities are consistent with the applicable Comprehensive Homeless Assistance Plan.

(8) Displacement. Each applicant must certify that the proposed activities will not result in the temporary or permanent displacement of any person or entity. HUD will not fund applications that will cause any individual, family, partnership, corporation, or association to move from real property or to move its personal property from real property because of an actual or impending acquisition or rehabilitation of real property, in whole or in part, for a project.

(9) Outpatient health services. If an applicant seeks assistance for the provision of outpatient health services, the applicant must demonstrate that the proposal for delivery of the outpatient health services meets the guidelines developed by HHS and HUD. Additionally as noted above, HUD will not approve an application that seeks more than $10,000 in assistance for such services (excluding the cost of any rehabilitation or conversion). If the proposal for the provision of outpatient health services does not meet the HHS/HUD guidelines, HUD may fund the remainder of the application if the application is operationally feasible without the services.

(10) Proposal feasibility. Each applicant must demonstrate that its proposal, when viewed as a whole, is operationally feasible and provides adequate facilities and supportive services to serve homeless individuals and families under SAFAH.

(ii) *Ranking.*

In the second step of the review of comprehensive assistance applications, all applications that meet the above threshold requirements will be placed in priority funding order based upon their scores on the following ranking criteria. The criteria are listed in order of the number of points to be accorded to each in the ranking process.

(a) Innovative quality. HUD will consider the extent to which the proposal involves a particularly innovative program for, or alternate method of, meeting the immediate and long-term needs of homeless individuals and families. In assessing an application under this criterion, HUD will consider the degree to which the applicant demonstrates that the proposal uses a new or unusual approach that holds promise of successfully meeting the immediate and long-term needs of homeless individuals or families.

(b) Comprehensiveness of proposed assistance. HUD will consider the comprehensiveness of the proposed assistance in serving the identified homeless population. In considering whether the proposed assistance is comprehensive, HUD will consider whether the facilities and supportive services to be provided under the proposal, and to be available from others in the area proposed to be served by the application, will satisfy the immediate and long-term needs of the homeless population to be served. HUD will award the maximum number of points to applications that demonstrate that the following will be provided: (1) Facilities and supportive services to meet the immediate needs of the population to be served (*e.g.*, temporary housing, food, appropriate clothing, medical needs, etc.); and (2) housing and supportive services to meet the long-term needs of the population to be served (*e.g.*, permanent housing or assistance in obtaining permanent housing, and supportive services necessary to move members of the homeless population to independent living, such as job training and employment counseling, nutritional counseling, etc.).

(c) Leveraging.

(1) General. HUD will consider the extent to which the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) will leverage the amount of assistance to be provided by HUD under SAFAH with funds and other resources from other public or private sources. HUD will award the maximum amount of points to applications that will leverage to the greatest extent the amount of assistance to be provided.

(2) Computation of the leveraged amounts.

(*a*) Except for funds made available under the Community Development Block Grant program, funds provided under a federally assisted program will be excluded in computing the amount of leveraged funds.

(*b*) Funds that are currently used to provide assistance to the homeless will be excluded from the leveraging computation.

(*c*) Leveraged resources that may be included are: monetary contributions from public or private organizations; donated materials, supplies, equipment, or structures; the value of any lease on a building, any salary paid to staff of the recipient (or of the other entity) for work related to the proposal; and the time and service contributed by volunteers. (For the purposes of this section, time and services contributed by volunteers must be computed at the rate of five dollars per hour.)

(d) Applicant capacity. HUD will consider the relative ability of the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) to initiate the proposed activities to serve the homeless within a reasonable time and in a successful manner, and to continue to carry out these activities

throughout the term of the proposed commitment in a successful manner. The factors that HUD will consider in making this judgment are discussed in section E.2.(i)(b)(2)(*d*) above. HUD will assign the greatest number of points under this criterion to applications that demonstrate experience in establishing and operating facilities to assist the homeless and in providing or coordinating the provision of supportive services, and that demonstrate on the basis of prior experience, the greatest ability to carry out activities under the program expeditiously and successfully.

(e) Strategy. HUD will consider the extent to which the proposal reflects a clear understanding of the needs of the homeless population to be served and appropriately responds to these needs. Under this ranking criterion, HUD will evaluate the extent to which the proposal reflects the unmet needs of the homeless, as identified in the Comprehensive Homeless Assistance Plan for the appropriate jurisdiction under section C.2. above, and the extent to which the proposed strategy addresses those needs. HUD will award the maximum number of points under this criterion to proposals that, to the greatest extent, reflect the needs contained in the Plan and propose strategies that directly respond to these needs. (Applicants that are tribes and, thus, do not have a Comprehensive Homeless Assistance Plan, will not be penalized under this ranking criterion.)

(f) Task force. HUD believes that meaningful response to the homelessness problem is best developed by the coordinated efforts of members of the State or locality who represent the full diversity of the State's or locality's experience, and who understand the size and characteristics of the homeless population, the efforts that are already underway to assist the homeless in the area, the efficacy of these programs in the community, and the availability of additional resources in the community to assist the homeless. These efforts, which would generally take the form of a task force or similar working group, should be able to bring to bear on the needs of the homeless, broad-based and enduring community commitment, access to resources, and leadership to overcome obstacles and barrier to coordination.

Accordingly, HUD will assign rating points based on whether the application is supported by a task force or group, as described below. HUD will assign points under this factor based on the following three components:

(1) Formation. HUD will assign points to an application that is supported by a task force or group that has as its purposes the implementation of short- and long-term community-wide strategies to address the problems of the homeless, and the coordination and procurement of resources to implement these strategies. HUD will assign the maximum number of points under this ranking factor to applications that are supported by a task force or group that has such purposes and that includes community-wide representation consisting of representatives of the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity), local governments and agencies, private nonprofit agencies that serve the homeless, and the private sector.

(2) Commitment. HUD will assign points based on the extent of the commitment of the task force or group to the implementation of the community-wide strategies and the coordination and procurement of resources to implement these strategies. The extent of the commitment may be demonstrated by letters signed by the individual members of the task force or group, indicating the role that the member (and the entity or entities or constituencies he or she represents) will play in the activities of the task force or group. The letters should describe the role of the individual (and the entity or constituencies he or she represents) in the implementation of the community-wide strategy, and the extent to which the member (and the entity or entities or constituencies he or she represents) will commit its own resources, or assist in securing resources from others, to implement this strategy. The maximum number of points will be awarded to applications that show that each member of the task force or group (and the entity or entities or constituencies he or she represents) has demonstrated a significant commitment of time and resources to the activities of the task force or group.

(3) Participation of chief elected official. Because HUD places importance on the implementation of community-wide strategies, HUD will consider the extent to which a chief elected official of a governmental jurisdiction to be served by the proposal has demonstrated an active, personal commitment to participate in the activities of the task force or group, as described above. The maximum number of points under this criterion will be given to applications that are supported by a task force or group that is attended and chaired by such an official.

(g) Special homeless populations. Under this criterion, HUD will consider whether the application proposes facilities designed primarily to benefit homeless elderly individuals and homeless families with children, and whether the application proposes facilities to be used for child care. The maximum number of points will be awarded to applications that propose facilities designed primarily to benefit homeless elderly individuals and homeless families with children.

(iii) *Environmental review.*

(a) General. After the completion of the ranking, HUD will perform an environmental review on the number of applications necessary to provide an adequate pool of applications to ensure that the entire available amount under SAFAH can be committed to applications for comprehensive assistance. HUD may augment this pool with other ranked applications that propose facilities designed primarily to benefit homeless elderly individuals and homeless families with children, or that propose child care facilities, if HUD determines that this is necessary to comply with section 432(d) of the McKinney Act, as described above. Applications that do not receive an environmental review will not be selected for funding. If the amount of funding requested in the ranked applications will not ensure that all program funds will be committed to applications for comprehensive assistance, HUD will review all ranked applications.

(b) Environmental considerations. In conducting the environmental review, HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Any application that requires an Environmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) is not eligible for funding. Applicants should be prepared to provide such additional information as HUD may request to complete the environmental review.

(c) Rating adjustments. (1) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. (See *e.g.*, 24 CFR Part 51). Accordingly, HUD will adjust the rating scores of such applications, based on the anticipated time delays in adopting appropriate impact mitigation measures.

(2) The environmental review often will reveal information not contained in

the application that may have relevance to the selection process. HUD will make further adjustments to the ratings based on the information revealed during the environmental review.

(iv) *Final selection.* In the final step of the selection process, the highest-ranked applications will be considered for final selection in accordance with their rank order, as determined under section E.2.(ii), and any adjustments made during environmental review under section E.2.(iii), above.

As noted above, under section 432(d) of the McKinney Act, HUD is required, to the maximum extent practicable, to reserve not less than 50 percent of all SAFAH funds for the support of facilities designed primarily to benefit homeless elderly individuals and homeless families with children (and a portion of these funds must be used for child care facilities). Additionally, that section requires HUD, to the extent practicable, to distribute SAFAH funds equitably across geographic areas.

In accordance with these requirements, HUD may substitute one or more other highly rated applications, if the top-rated applications under the ranking criteria described above do not ensure an equitable distribution across geographic areas, or do not ensure that at least 50 percent of all funds provided under this category of funding will support facilities designed primarily to benefit homeless elderly individuals and homeless families with children (including a portion of funds used for child care facilities.)

3. Assistance in excess of ESG and SHD program funding.

If all funds are not committed to applications for comprehensive assistance during the first stage of the selection process, HUD will consider applications seeking assistance in excess of ESG and SHD program funding. The threshold requirements, ranking criteria, environmental review, and final selection process for such applications are described below.

(i) *Threshold requirements.*

(a) General. (1) To be eligible for evaluation under the ranking criteria set out in section E.3.(ii), applications must meet each of the threshold criteria described below (as modified for wholly secular private nonprofit organizations established by a primarily religious organization under section B.3.(ii), above).

(2) If HUD determines that an application fails to meet the threshold criteria in section E.3. related to site control and zoning, that these are the only deficiencies in the application under the threshold criteria, and that the deficiencies are correctable, HUD may contact the applicant, identify the deficiencies, explain how the deficiencies can be corrected, and require the applicant to correct the deficiencies. HUD will establish a deadline for the submission of the additional site control and zoning information that will permit the Department to meet its deadlines for final selection.

(3) Applications that fail to meet the threshold criteria, including those that have not been corrected within any additional time provided by HUD, will not be eligible for SAFAH funding.

(b) Threshold criteria.

(1) Contents, time and adequacy of the application. The application must be filed within the time periods established by HUD in this Notice and must include all required elements, and contain evidence or information sufficient to support each of its elements. (See application contents requirements described in the appendix.)

(2) Applicant

(*a*) Eligibility to receive assistance. The applicant must demonstrate that it is a State, a metropolitan city, an urban county, a tribe, or a private nonprofit organization. If the applicant is submitting an application on behalf of another entity, the applicant must demonstrate that both the applicant and the other entity are eligible to participate in SAFAH as provided in the definition of applicant under section A., above.

(*b*) Financial responsibility. HUD has determined, for purposes of this program, that all governmental entities, including tribes, are financially responsible. Any private nonprofit organization applying for assistance (or, on behalf of which an application is submitted) must demonstrate its financial responsibility. In making its determination of financial responsibility, HUD will consider such factors as the past financial history of the organization, its current and anticipated financial outlook, the amount of funding that will be committed under the proposal, and the organization's other financial responsibilities.

(*c*) Commitment to alleviating poverty. Each applicant must show a commitment to alleviating poverty. In determining whether the applicant fulfills this threshold criterion, HUD will consider the applicant's past efforts and its continuing commitment to serve lower income persons, and in the case of a private nonprofit organization, whether the applicant's organizational objectives foster service to such persons. (Evidence of organizational objectives may be contained in the applicant's charter, by-laws, articles of incorporation, mission statements, minutes of its governing body, or other organizational documents.)

(*d*) Capacity. Each applicant must demonstrate that the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) has the continuing ability to effectively provide assistance to homeless individuals. Under this criterion, the applicant must demonstrate that the applicant (or the other entity) is able to initiate proposed activities within a reasonable time after execution of a grant agreement with HUD and in a successful manner, and to continue to carry out the proposed activities throughout the term of the commitment under the proposal in a successful manner. In determining whether the application meets this threshold criterion, HUD will consider the applicant's (or the other entity's) experience in operating facilities to assist the homeless or in providing or coordinating supportive services. HUD also will consider the ability of the applicant's (or other entity's) personnel to perform administrative, managerial, and operational functions necessary to the successful development and operation of facilities to assist the homeless.

(*e*) Legal authority. Each applicant must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) has the legal authority to participate in the program and to carry out activities in accordance with SAFAH and the requirements of other applicable Federal law; and must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by the governing body of the applicant (and the other entity) authorizing the submission of the application under SAFAH.

(3) Proposal

(*a*) Status of ESG or SHD program. Each applicant must show that the application is made in connection with:

—A project that has been approved for, or has received funding under the ESG or SHD program;

—A project for which an application for ESG or SHD funding has been submitted, and the application either is presently pending or has been denied funding; or

—A project for which assistance is sought to acquire property to be used for shelters for homeless families with children.

(*b*) Purpose. Each applicant must demonstrate that the proposal will serve the purposes of the ESG program or the SHD program. Applicants seeking assistance must demonstrate that the proposal will serve or complement the following goals:

(*1*) The proposal will improve the qualityof existing emergency shelters for the homeless, make available additional emergency shelters, or help meet the costs of operating emergency shelters and of providing supportive services to homeless individuals, so that these persons will have access not only to safe and sanitary shelter, but also to supportive services and other kinds of assistance they need to improve their lives; or

(*2*) The proposal will assist in facilitating the movement of homeless individuals to independent living within a reasonable time or will assist in the provision of permanent housing and supportive services to handicapped homeless individuals.

(*c*) Each applicant must demonstrate that SAFAH assistance will either serve the special needs of homeless families with children, elderly homeless individuals, or the handicapped; or facilitate the transfer and use of public buildings to assist homeless individuals and families.

(4) Proposed facilities and supportive services.

(*a*) Need. The applicant must demonstrate an unmet need for the proposed facilities, proposed supportive services or other assistance to be provided to the homeless under the proposal. Applicants must demonstrate that the need exists in the area to be served, and that this need is likely to continue through the term of the proposed commitment of HUD. Applicants should use relevant information contained in the Comprehensive Homeless Assistance Plan to demonstrate need.

(*b*) Appropriateness of the proposed facilities. If the application seeks assistance for facilites to assist the homeless the applicant must demonstrate that the proposed structures and sites are appropriate for the provision of facilities, supportive services, or other aid to be provided to the homeless population proposed to be served. In determining whether facilities will be suitable for the provision of supportive services, HUD will consider whether the structure is designed to permit the provision of proposed on-site supportive services, and whether any proposed off-site supportive services are readily accessible.

(*c*) Siting and zoning. Except as provided in section E.3.(i)(a)(2) above, if the application seeks assistance for facilities to assist the homeless, the application must meet the following siting and zoning requirements at the time of application:

—The applicant must demonstrate that the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) has control of the site involved. For example, the applicant may demonstrate that it (or the other entity) owns or has an option to purchase, or leases or has an option to lease, the structure involved.

—The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully within 30 days following the selection of the application for funding.

—The applicant must submit a statement that the proposed project is not located in any 100-year floodplain, as designated by maps prepared by the Federal Emergency Management Agency (FEMA). If 50 percent or more of the living space in the structure is designed for residents with mobility impairments, the applicant must submit a statement that the project is not located in any 500-year floodplain, as designated on FEMA maps.

The applicant must meet one of the following requirements with respect to historic preservation:

—The applicant may provide a letter from the State Historic Preservation Officer (SHPO) indicating that the facility to be funded under the Program will not involve an historic property as defined in 36 CFR 800.2 (*i.e.*, an historic or prehistoric district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places) and will not involve a structure that is immediately adjacent to an historic property that is listed on the Register.

—If the facilities involve an historic property that is included in or eligible for inclusion in the Register or is immediately adjacent to an historic property that is listed on the Register, the applicant may demonstrate that the SHPO has agreed to the proposed use of the property and to measures to avoid or reduce any adverse effects of such use;

—The applicant may demonstrate that an environmental review of the area in which the proposed facilities are to be located: (i) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58; and (ii) addressed properties, activities, and effects comparable to those proposed for assistance under SAFAH. (If HUD finds that the prior review applies to the proposed activities, this threshold requirement will be met.)

(5) Operating assurances. If the application involves assistance for the purchase, lease, rehabilitation, or conversion of facilities to assist the homeless, the applicant must demonstrate, in the form of assurances acceptable to HUD, that the facility will be operated to assist the homeless for a term of not less than 10 years from the date of initial occupancy.

(6) Proposal feasibility. If the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) seeks SAFAH funding in connection with a project that has been approved for, or has received, funding under the ESG or SHD program, HUD may consider the ESG or SHD project in determining whether the SAFAH proposal is operationally feasible. In all other cases, the application must demonstrate that the proposal is operationally feasible without ESG or SHD funding.

(7) Reasonable efforts. The applicant must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) have made reasonable efforts to use all available local resources, including State and local government funding (*e.g.*, Community Development Block Grant funds), resources available from the private sector, and resources available under Title IV of the McKinney Act (the ESG program, the SHD program, and the Section 8—Moderate Rehabilitation program for Single Room Occupancy Dwellings authorized under Subtitle E). The application must also demonstrate that other resources are not sufficient or are not available to carry out the purpose for which the assistance is being sought.

In determining whether reasonable efforts have been made to obtain McKinney Act funds, the applicant must show that either the applicant (and the other entity) or the proposed activities

are ineligible for funding under the requirements of the described programs; or if the proposed activities are eligible for funding under one or more of the programs, that the applicant (and the other entity) sought and were not granted sufficient funding under the programs as of the application submission date.

In considering whether reasonable efforts have been made to use local resources, HUD will consider such factors as fund-raising activities undertaken by the applicant (and the other entity) and any requests for assistance for available funds made by the applicant (and the other entity) to State or local governments or private entities, such as charitable organizations or private businesses.

(8) Consistency with Comprehensive Homeless Assistance Plan. Applicants must provide a certification from the public official responsible for submitting a Comprehensive Homeless Assistance Plan for the appropriate jurisdiction (as described under section C.2., above), stating that the proposed activities are consistent with the applicable Comprehensive Homeless Assistance Plan.

(9) Displacement. Each applicant must certify that the proposed activities will not result in the temporary or permanent displacement of any person entity. HUD will not fund applications that will cause any individual, partnership, corporation, or association to move from real property or to move its personal property from real property because of an actual or impending acquisition or rehabilitation of real property, in whole or in part, for a project.

(10) Outpatient health services. If an applicant seeks assistance for the provision of outpatient health services, the applicant must demonstrate that the proposal for delivery of the outpatient health services meets the guidelines developed by HHS and HUD. Additionally as noted below, HUD will not approve an application that seeks more than $10,000 in assistance for such services (excluding the cost of any rehabilitation or conversion). If the proposal for the provision of outpatient health services does not meet the HHS/HUD guidelines, HUD may fund the remainder of the application if the application is operationally feasible without the services.

(ii) *Ranking.* In the second set of the review of applications for assistance in excess of funding provided under the ESG and SHD program, all applications that meet the above threshold requirements will be placed in priority funding order based upon their scores on the following ranking criteria. The criteria are listed in order of the number of points to be accorded to each in the ranking process.

(a) Applicant capacity. HUD will consider the relative ability of the applicant (or, in the case of an applicant that submits an application on behalf of another entity, the other entity) to initiate the proposed activities to serve the homeless within a reasonable time and in a successful manner, and to continue to carry out these activities throughout the term of the proposed commitment in a successful manner. (The factors that HUD will consider in making this judgment are discussed in section E.3.(i)(b)(2)(*d*), above.) HUD will assign the greatest number of points under this criterion to applications that demonstrate experience in establishing and operating facilities to assist the homeless and in providing or coordinating the provision of supportive services, and that demonstrate on the basis of prior experience, the greatest ability to carry out activities under the program expeditiously and successfully.

(b) Impact on needs of designated homeless populations. HUD will consider the extent to which the proposed activities will address one or more of the unmet special needs of homeless families with children, elderly homeless individuals, or the handicapped. HUD will assign the maximum number of points under this ranking criterion to applications that will serve only members of the designated homeless populations and whose proposed activities will best address the identified special needs of these populations.

(c) Cost effectiveness. HUD will consider the extent to which the applicant's proposed costs under the proposal are reasonable in relation to the work done and the goods and services purchased; and are effective in accomplishing the purposes of the proposal.

(d) Special homeless populations. Under this criterion, HUD will consider whether the application proposes facilities designed primarily to benefit homeless elderly individuals and homeless families with children, and whether the application proposes facilities to be used for child care. The maximum number of points will be awarded to applications that propose facilities designed primarily to benefit homeless elderly individuals and homeless families with children.

(iii) *Environmental review.*

(a) General. After completion of ranking, HUD will perform an environmental review on the number of applications necessary to provide an adequate pool of applications to ensure that the entire amount available for applications for assistance in excess of funding provided under the ESG and SHD program can be obligated. HUD may augment this pool with other ranked applications that propose facilities designed primarily to benefit homeless elderly individuals and homeless families with children, or that propose child care facilities, if HUD determines that this is necessary to comply with section 432(d) of the McKinney Act, as described above. Applications that do not receive an environmental review will not be selected for funding. If the amount of funding requested in the ranked applications will not ensure that all program funds will be committed to applications for assistance in excess of funding provided under the ESG and SHD program, HUD will review all ranked applications.

(b) Environmental considerations. In conducting the environmental review, HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Any application that requires an Environmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment process at 24 CFR Part 50, Subpart E) is not eligible for funding. Applicants should be prepared to provide such additional information as HUD may request to complete the environmental review.

(c) Rating adjustments. (1) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. (See *e.g.*, 24 CFR Part 51). Accordingly, HUD will adjust the rating scores of such applications, based on the anticipated time delays in adopting appropriate impact mitigation measures.

(2) The environmental review often will reveal information not contained in the application that may have relevance to the selection process. HUD will make further adjustments to the ratings based on the information revealed during the environmental review.

(iv) *Final selection.* In the final step of the selection process, the highest-ranked applications will be considered for final selection in accordance with their rank order, as determined under section E.3.(ii), above, and any adjustments made during environmental review under section E.3.(iii), above.

In accordance with section 432(d) of the McKinney Act, HUD may substitute one or more other highly rated applications if the top-rated applications under the ranking criteria described above do not ensure an equitable distribution across geographic areas, or do not ensure that more than 50 percent of all funds provided under this category of funding will support facilities designed primarily to benefit homeless elderly individuals and homeless families with children (including a portion of funds used for child care facilities).

4. Procedures for applications involving outpatient health services.

Under section 432(e)(2) of the McKinney Act, HUD and HHS are required to jointly establish guidelines for determining the appropriateness of proposed outpatient health services. HHS and HUD have established these guidelines and they have been incorporated in this Notice.

Section 432(e)(1) of the McKinney Act provides that upon the receipt of any SAFAH application that includes the provision of outpatient health services, HUD must consult with HHS with respect to the proposed services. If HHS determines that the proposal for delivery of outpatient health services does not meet the requirements of HHS/HUD guidelines, the statute permits HUD to require the resubmission of the application, and provides that HUD may not approve such portion of the application until it has been resubmitted in a form that meets the guidelines.

Under the threshold criteria described at sections E.2.(i)(b)(9) and E.3.(i)(b)(10), above, HUD will review all applications that seek assistance for the provision of outpatient health services to determine if the application meets the HHS/HUD guidelines and does not seek more than $10,000 in funding for such services. A representative of HHS will assist in this threshold review. Given the limited time period that HUD has set for the review of applications, HUD has elected not to permit the resubmission of applications that fail to meet the HHS/HUD guidelines. As noted above, however, if the provision of outpatient health services does not meet the HHS/HUD guidelines incorporated in this Notice, HUD may fund the remainder of the application if the proposal is operationally feasible without the services.

F. Program Requirements

1. Grant Agreement

(i) *General.* The duty to provide facilities to assist the homeless in accordance with the program requirements will be incorporated in a grant agreement executed by HUD and the recipient.

(ii) *Enforcement.* HUD will enforce the obligations in the grant agreement through actions on the contract. In addition, restrictions regarding the use of structures will be contained in covenants recorded in the land records of the jurisdiction in which the structure is located.

2. Required Agreements

Each recipient of assistance must agree (or in the case of a recipient that submitted an application on behalf of another entity, the applicant must ensure that the other entity agrees):

(i) To assist the homeless in accordance with the proposal as approved by HUD and the requirements of this Notice.

(ii) To operate any property that has been purchased, leased, rehabilitated, or converted with an advance or grant provided under the program as facilities to assist the homeless for not less than 10 years following the date of initial occupancy.

(iii) If HUD has provided assistance for facilities to assist the homeless, the facilities must be safe and sanitary and must comply with all State and local housing codes, licensing requirements, and other requirements in the jurisdiction in which the facility is located regarding the condition of the structure and the operation of the facilities to assist the homeless.

(iv) To keep any records and make any reports that HUD may require.

3. Term of Commitment

(i) *General.* Recipients receiving assistance to purchase, lease, rehabilitate, or convert property for facilities to assist the homeless (or, in the case of a recipient that submitted an application for such assistance on behalf of another entity, the other entity) must operate the facilities for a term of at least 10 years from the date that the facility is initially occupied by a homeless person for whom assistance is provided under the SAFAH program. Other facilities assisted under SAFAH must be operated for the term proposed in the application and approved by HUD.

(ii) *Successors.* (a) A recipient may select a successor to assume its obligations under SAFAH. A successor-recipient must be approved by HUD before its assumption of obligations. Any obligations for the repayment of advances and for the prevention of undue benefits may remain with the original recipient or may be transferred to the successor-recipient, depending on the terms of the HUD approval.

(b) In the case of a recipient that submitted an application on behalf of another entity, the recipient and the other entity may select a second entity to assume the obligations of the first entity under SAFAH. A successor-entity must be approved by HUD before its assumption of obligations. Any obligations for the repayment of advances and for the prevention of undue benefits may remain with the original entity or may be transferred to the successor-entity, depending on the terms of the HUD approval.

4. Repayment of Advance

(i) *General.* The recipient of an advance under SAFAH (and, in the case of a recipient that submitted an application for an advance on behalf of another entity, the other entity) are responsible for the repayment of the advance in the amount prescribed below and in accordance with the terms prescribed by HUD.

(ii) *Amount of repayment.* The recipient (and the other entity) are responsible for the repayment of the full amount of the advance if the project is used as facilities to assist the homeless for less than 10 years following the date of initial occupancy. For each full year that the project is used as facilities to assist the homeless following the expiration of this 10-year period, the amount that the recipient (and the other entity) are responsible for repaying will be reduced by one tenth of the original advance. If the project is used as facilities to assist the homeless for 20 years following the date of initial occupancy, the recipient (and the other entity) will not be required to repay any portion of the advance.

(iii) *Alternate use.* Upon written request of the recipient (and, in the case of a recipient that submitted an application on behalf of another entity, the other entity), HUD may determine that a project is no longer needed to assist the homeless, and may approve an alternate use of the project for the direct benefit of lower income persons. For the purposes of determining the amount of the repayment obligation, such a project will continue to be treated as facilities to assist the homeless as long as it is used for the approved alternate purpose.

5. Prevention of Undue Benefits

(i) *General.* If a project is acquired, leased, renovated, or rehabilitated with an advance or a grant and the project is sold or otherwise disposed of during the 20 years following initial occupancy, the

recipient (and, in the case of a recipient that submitted an application for such assistance on behalf of another entity, the other entity) must comply with such terms and conditions as HUD may prescribe to prevent the recipient (and the other entity) from unduly benefitting from the sale or the disposition.

(ii) *Exception.* This provision does not apply to sales or dispositions that result in the continued use of the project for the direct benefit of lower income persons.

6. Applicability of Other Federal Requirements

Use of SAFAH assistance must comply with the following additional requirements:

(i) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of homeless persons, a recipient (and, in the case of a recipient that submitted an application on behalf of another entity, the other entity) serving a designated population of homeless persons are required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, and handicap:

(a) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(c) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(d) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(e) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients (and, in the case of a recipient that submitted an application on behalf of another entity, the other entity) must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(f) If the procedures that the recipient (and, in the case of a recipient that submitted an application on behalf of another entity, the other entity) intend to use to make known the availability of assistance to the homeless are unlikely to reach persons of any particular race, color, religion, sex, age, or national origin who may qualify for assistance, the recipient (and the other entity) must establish additional procedures that will ensure that these persons are made aware of the availability of assistance opportunities. The recipient (and the other entity) must also establish additional procedures that will ensure that interested persons can obtain information concerning the existence and location of services and facilities that are accessible to handicapped persons.

(ii) *Environmental.* The National Environmental Policy Act of 1969, the related authorities in 24 CFR Part 50, and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601) are applicable to proposals under this program.

(iii) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102 apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations.

(iv) *Lead-based paint.* (a) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 (except as superseded in paragraph (b), below) apply to the program. These requirements reflect the section 8 Existing Housing regulations (24 CFR 882.109) (published in the **Federal Register** on January 15, 1987, 52 FR 1876, 1893–94) and the Lead-Based Paint requirements contained in the Transitional Housing Demonstration Program Guidelines (published on June 9, 1987, 52 FR 21743, 21761).

(b)(1) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in Subpart C of 24 CFR Part 35. The requirements of this paragraph apply to structures that will be occupied by children under seven years of age.

(2) The following definitions apply to this paragraph (b):

Applicable surface means all exterior surfaces of a residential structure, up to five feet from the floor or ground, such as a wall, stairs, deck, porch, railing, window, or door, which are readily accessible to children under seven years of age, and all interior surfaces of a residential structure.

Chewable surface means all chewable, protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age: *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or *EBL* means excessive absorption of lead: *i.e.*, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(3) In the case of a structure constructed before 1973, the applicant must inspect the structure for defective paint surfaces before it submits an application. Recipients must inspect assisted structures at least annually during the term of their operating commitment to HUD. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(4) In the case of a structure constructed before 1973, if the recipient is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable

surfaces. Testing must be conducted by a State or local health or housing agency, or by an inspector certified by a State or local health or housing agency. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or other methods approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(5) In lieu of the procedures set forth in the preceding clause, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the method set out at 24 CFR 35.24(b)(2)(ii).

(6) The recipient must take appropriate action to protect tenants from hazards associated with abatement procedures.

(7) The recipient must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the recipient must keep the test results and, if applicable, the certification of treatment, indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this Section, these surfaces do not have to be tested or treated at any subsequent time.

(c) Applicants and recipients that submit an application on behalf of another entity, may require the other entity to comply with some or all of the requirements of this paragraph. The applicant or recipient, however, must ensure that the entity carries out all requirements in accordance with this paragraph, and must retain ultimate responsibility for complying with the requirements of this paragraph.

(v) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circulars A–102 and A–110, no person (a) who is an employee, agent, consultant, officer, or elected or appointed official of the recipient (or, in the case of a recipient that submitted an application on behalf of another entity, the other entity) that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities or (b) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(vi) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(vii) *Audit.* The financial management systems used by governmental entities under this program must provide for audits in accordance with 24 CFR Part 44. Private nonprofit organizations are subject to the audit requirements of OMB Circular A–110. HUD may perform or require further and additional audits as it finds necessary or appropriate.

(viii) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 are not applicable to applications under this program.

(ix) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a–276a–5) do not apply to SAFAH.

G. Administrative Provisions

1. Obligation of Funds, Funding Amendments and Deobligation

(i) *Obligation of funds.* When HUD selects an application for funding and notifies the recipient, it will obligate funds to cover the amount of the approved advance or grant.

(ii) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for the advance or grant.

(iii) *Deobligation.* (a) HUD may deobligate amounts for the advance or grant if proposed activities are not begun or completed within a reasonable time after selection.

(b) The grant agreement will set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

(c) HUD may:

(1) Readvertise the availability of funds that have been deobligated under this section in a Notice of Funds Availability; or

(2) Reconsider applications that were submitted in response to the most recently published Notice of Funds Availability under SAFAH and select applications for funding with deobligated funds. Such selections will be made in accordance with the selection process described in section E., above.

2. Waiver

The Secretary of HUD may waive any SAFAH requirement that is not required by law, if the Secretary determines that good cause for waiver exists. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number is 2528–0128.

(The Catalog of Federal Domestic Assistance Program Number is 14.510)

Authority: Section 433, Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–71, approved July 22, 1987); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 13, 1987.

C. Duncan MacRae,

Acting Assistant Secretary for Policy Development and Research.

Appendix

Required Information for All Applications

—Preliminary Information

(1) The first page of each application must indicate: (a) the type of assistance requested under the application (*i.e.* whether the applicant requests comprehensive assistance or assistance in excess of funding provided under the ESG and SHD program funding); and (b) whether the applicant seeks assistance for outpatient health services.

(2) Each application must include a table of contents indicating the location of information demonstrating that the applicant has met each of the applicable threshold criteria.

—Applicant Data

(1) The application must include the name, mailing address, and telephone number of applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other

entity) and the contact person to whom communications should be addressed.

(2) The application must provide evidence that the applicant is a State, a metropolitan city, an urban county, a tribe or a private nonprofit organization (see paragraph (a) of the definition of applicant contained in section A). If the applicant is submitting an application on behalf of another entity, the application must include evidence that the other entity is an eligible entity (see paragraph (b) of the definition of applicant contained in section A).

(3) The applicant must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) have the legal authority to participate in the program and to carry out activities in accordance with program requirements and the requirements of other applicable Federal law. (See sections E.2.(i)(b)(2)(*e*) and E.3.(i)(b)(2)(*e*) for a description of required evidence.)

(4) For private nonprofit organizations that are applicants (and, in the case of an applicant that submits an application on behalf of another private nonprofit organization, for the other entity), the application must include information necessary to demonstrate financial responsibility. (See sections E.2.(i)(b)(2)(*b*) and E.3.(i)(b)(2)(*b*) for a description of necessary documentation.)

(5) The application must include evidence of the applicant's commitment to alleviating poverty. (See sections E.2(1)(b)(2)(*c*) and E.3.(i)(b)(2)(*c*) for a desciption of required documentation.)

(6) The application must contain evidence of continuing capacity of the applicant (or, in the case of an applicant that submits an application on behalf of another entity, of the other entity) to effectively provide assistance to homeless individuals. (See sections E.2(i)(b)(2)(*d*) and E.3.(i)(b)(2)(*d*) for required evidence.)

(7) If the applicant is a primarily religious organization, if assistance is to be provided to a wholly secular organization established by a primarily religious organization, or if the facilities to be used in the proposed project are owned by a primarily religious organization, the application must demonstrtate that it will meet the requirements described in section B.3.(ii).

—Assistance Requested

(1) Category of funding requested. The applicant must identify which category of funding assistance is requested (*i.e.*, comprehensive assistance or assistance in excess of ESG or SHD program funding).

(2) Type of assistance requested. The applicant must identify the type of assistance requested (*i.e.*, an advance to assist the acquisition, lease, substantial rehabilitation, or conversion of facilities, a grant for moderate rehabilitation or a grant for other purposes), the amount of assistance requested for each type of assistance, and a line item budget demonstrating how the assistance will be spent. In addition to other line items, the budget should specifically identify the amount of assistance that will be used to provide outpatient health services; for administrative expenses; to support facilities designed primarily to benefit homeless elderly individuals and homeless families with children; and in support of child care facilities.

—Proposed Activities

(1) Homeless population to be served. The applicant must describe the size and characteristics of the population that will be served by the proposal (including a description of the particular homeless population to be served, number of individuals to be served by the proposal, and the supportive services required by the homeless population to be served). Applicants must estimate the number and proportion of the homeless population to be served that will be homeless elderly individuals, homeless families with childern, or the handicapped.

(2) A description of the proposed facilities. The application must include:

(a) Information identifying the facilities to be used and demonstrating that the facilities are appropriate for the homeless population to be served. (See sections E.2.(i)(b)(3)(*b*) and E.3.(i)(b)(4)(*b*).)

(b) With regard to the facilities to be used to assist the homeless, the applicant is requesting assistance for the facilities:

—A description of the acquisition, lease, rehabilitation or conversion activities to be assisted;

—Information demonstrating that the applicant (or in the case of an applicant that submits an application on behalf of another entity, the other entity) has site control;

—Evidence demonstrating that the use of the proposed site is consistent with applicable zoning ordinances and regulations, or will be consistent with such ordinances and regulations within 30 days following the selection of applications for funding;

—Evidence demonstrating that the facilities are not located within a 100-year floodplain, as designated by FEMA. (The applicant must show that the facilities are not located in a 500-year floodplain, if 50 percent or more of the living space in the facility is designed for residents with mobility impairments). (See sections E.2.(i)(b)(3)(*c*) and E.3.(i)(b)(4)(*c*).)

(c) The applicant must meet one of the following requirements with respect to historic preservation:

—The applicant may provide a letter from the State Historic Preservation Officer (SHPO) indicating that the facility to be funded under the program will not involve an historic property as defined in 36 CFR 800.2 (*i.e.*, an historic or prehistoric district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places) and will not involve a structure that is immediately adjacent to an historic property that is listed on the Register;

—If the facilities involve an historic property that is listed on the Register or is immediately adjacent to an historic property that is listed on the Register, the applicant may demonstrate that the SHPO has agreed to the proposed use of the property and to measures to avoid or reduce any adverse effects of such use; or

—The applicant may demonstrate that an environmental review of the area in which the proposed facilities are to be located: (1) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58; and (2) addressed properties, activities, and effects comparable to those proposed for assistance under the SAFAH program. (See sections E.2.(i)(b)(3)(*c*) and E.3.(i)(b)(4)(*c*).)

(d) The applicant must identify the percentage of the homeless to be served in the assisted facilities will be homeless elderly individuals or homeless families with children.

(e) The applicant must identify the assisted facilities that will be used for child care.

(3) Description of services. The application must include a description of the proposed services to be provided, including a description of the services to be provided with the SAFAH funds, services to be provided by others, services that the applicant currently provides, and services currently provided by others.

(4) Need. The applicant must demonstrate that there is a continuing and unmet need for the proposed facilities, services and other aid to be provided under the proposal. (See sections E.2.(i)(b)(3)(*a*) and E.3.(i)(b)(4)(*a*).)

(5) Term of commitment. The application must state the term of the proposed commitment to provide the proposed operations.

(6) Outpatient health services. If the applicant seeks assistance for outpatient health services, the applicant must demonstrate that the proposed services meet the HHS/HUD guidelines incorporated in this Notice.

(7) Proposal feasibility. The applicant must demonstrate that the proposal is operationally feasible under the applicable criteria described in sections E.2.(i)(b)(10) and E.3.(i)(b)(6).

—Reasonable Efforts

Applicants must demonstrate that the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) have made reasonable efforts to utilize all available local resources and resources available under the McKinney Act and that these other resources are not sufficient or are not available to carry out the purposes of the application. (See sections E.2.(i)(b)(6) and E.3.(i)(b)(5).)

—Consistency with Comprehensive Plan

The applicant must include a certification from the public official responsible for submitting the Comprehensive Homeless Assistance plan as described under section C.2., stating that the proposal is consistent with the applicable Comprehensive Homeless Assistance Plan. This certification is not required of applicants that are tribes.

—Certifications

The applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) must certify that:

(1) It will comply with the federal requirements described in section E.6. of this notice addressing: nondiscrimination and equal opportunity requirements; applicable OMB circulars; the Lead-Based Paint Poisoning Prevention Act; conflict of interest prohibitions; prohibitions against the use of debarred, suspended, or ineligible contractors; and audit requirements.

(2) It will assist the homeless in accordance with their proposal as approved by HUD and the requirements of the SAFAH program.

(3) A resolution, motion or similar action has been adopted authorizing the submission of the application. (See sections E.2.(i)(b)(2) and E.3.(i)(b)(2).)

(4) The proposed activities will not result in the temporary or permanent displacement of any person or entity.

(5) If the application involves assistance to acquire, lease, rehabilitate, or convert facilities to assist the homeless, the facility will be operated to assist homeless individuals for a term of not less than 10 years from the date of initial occupancy. For other applications, the applicant (and other entity) must certify that the operation will be conducted for the term of the commitment proposed in the application.

(6) If the application involves assistance for facilities to assist the homeless, the facilities meet or will meet applicable State and local housing codes, licensing requirements, and other requirements in the jurisdiction in which the facility is to be located regarding the condition of the structure and the operation of the facilities.

(7) If the application involves an advance for the acquisition, lease, substantial rehabilitation or conversion of facilities to assist the homeless, the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) agree to repay the advance in accordance with the provisions of section E.4.

(8) If the application involves a facility that is acquired, leased rehabilitated, or converted with an advance or a grant, the applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) agree to comply with such terms and conditions that may be prescribed by HUD to prevent the recipient (or other entity) from unduly benefitting from a sale or disposition occurring prior to the expiration of 20 years from the date of initial occupancy of the facility.

(9) If the application involves the provision of outpatient health service, not more than $10,000 will be used for such services.

(10) Not more than five percent of the requested SAFAH funds will be used for administrative expenses.

(11) Assistance provided under the SAFAH program will be used only to provide new facilities or services for the homeless, to expand existing facilities serving the homeless, or to provide services in addition to those currently provided to the homeless.

(12) Assistance provided under the SAFAH program will not be used to supplant any non-Federal resources provided with respect to any project.

(13) If the application is selected for funding, the applicant will execute a grant agreement with HUD within two weeks of receipt of notification of funding approval.

(14) If required in the notification of funding approval, the applicant will form a wholly secular private nonprofit entity to be the recipient of funds under the program and it will transfer site control to the new entity.

(15) The funds obligated by HUD under the SAFAH program cannot be increased, but may be decreased in accordance with section F.1.

(16) The applicant (and, in the case of an applicant that submits an application on behalf of another entity, the other entity) will keep any records and make any reports that HUD may require.

(17) The cost estimates used in the application can be supported by documentation on file with the applicant (or in the case of an applicant that submits an application on behalf of another entity, the other entity) and the applicant (or the other entity) will maintain this documentation for at least three years.

Additional Informations in Application for Comprehensive Assistance

—Required Information

The application must contain information demonstrating that the proposal involves a particularly innovative program for or alternate method of meeting the immediate and long term needs of homeless individuals and families. (See sections E.2.(i)(b)(5) and E.2.(ii)(a)).

—Information for Ranking Purposes

(1) Comprehensiveness. Applicants should provide a evidence demonstrating that the facilities and supportive services to be provided under the proposal, and to be available from others in the area proposed to be served by the application, will satisfy the immediate and long-term needs of the homeless population proposed to be served. (See section E.2.(ii)(b).)

(2) Leveraging. The application should contain information identifying the amounts and sources of resources (other than to be provided by HUD under the SAFAH program and resources that are currently used to provide assistance to the homeless) that will be available for use in the proposal. (See section E.2.(ii)(c).)

(3) Strategy. The application should explain how the proposed facilities and services reflect the unmet needs of the

homeless as identified in the appropriate Comprehensive Homeless Assistance Plan and how the proposal addresses these needs. (See section E.2.(ii)(e).)

(4) Task force group. The application should identify any task force or group that supports the application, describe the purposes of the task force or group, identify the membership of the task force or group (including if any chief executive officer of a local governmental jurisdiction chairs, or is a member of the task force or group), and include letters of commitment of members of the task force or group. (See section E.2.(ii)(f).)

Additional Information in Applications Seeking Assistance in Excess of ESG and SHD Program Funding

—Required Information

Applications for assistance in excess of ESG or SHD program funding must:

(1) Demonstrate that the applicant is an eligible applicant for assistance in excess of ESG or SHD program funding as defined in paragraph (c) of the definition of applicant. (See section A.)

(2) Show that the application is made in connection with: a project that has been approved for, or has received funding under the ESG or SHD program; a project for which an application for ESG or SHD funding has been submitted, and the application is either presently pending or has been denied; or a project for which assistance is sought to acquire property to be used for shelters for homeless families with children (See E.3.(i)(b)(3)(*a*).)

(3) Include a narrative description explaining how the proposal will serve or complement the goals of the ESG or SHD program. (See E.3.(i)(b)(3)(*b*).)

(4) If the proposal will serve homeless families with children, elderly homeless individuals, or handicapped persons, the application should identify the special needs of the population to be served, explain how some or all of these needs are currently being met in the community, and explain how the proposal will serve the unmet needs. (See E.3.(i)(b)(3)(*c*).)

(5) Identify public buildings to be transferred or utilized under the proposal, and explain how these buildings will be used to assist homeless individuals and families. (See E.3.(i)(b)(3)(*c*).)

Information for Ranking Purposes

The applicant must demonstrate that the proposed costs are reasonable in relation to the work done and goods and services purchased; and are effective in accomplishing the purposes of the proposal.

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BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. D-87-866; FR 2389]

Delegation of Authority With Respect to Supplemental Assistance for Facilities To Assist the Homeless

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: Title VI, Subtitle D, of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) authorizes a program of supplemental assistance for facilities to assist the homeless. This notice delegates to the Assistant Secretary for Policy Development and Research and the General Deputy Assistant Secretary for Policy Development and Research, the Secretary's power with respect to this program, subject to specified exceptions.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Division of Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-5537 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Notice states the scope of authority given to the Assistant Secretary for Policy Development and Research and General Deputy Assistant Secretary for Policy Development and Research for the program of supplemental assistance for facilities to assist the homeless. All of the Secretary's authority with respect to this program is delegated except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules, regulations and guidelines under the program.

Title IV, Subtitle D of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77 approved July 22, 1987) authorizes a program of supplemental assistance for facilities to assist the homeless. A notice establishing requirements for the operation of this program is published elsewhere in today's issue of the **Federal Register**. Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Assistant Secretary for Policy Development and Research and the General Deputy Assistant Secretary for Policy Development and Research are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the program of supplemental assistance for facilities to assist the homeless authorized in Title VI, Subtitle D of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987), except as indicated in Section B below. This includes the authority to issue or waive rules, regulations, or guidelines under the Program.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A the power to sue or be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Policy Development and Research and the General Deputy Assistant Secretary for Policy Development and Research are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules, regulations and guidelines under the Program.

(Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: October 15, 1987.

Carl D. Covitz,

Acting Secretry.

[FR Doc. 87-24243 Filed 10-16-87; 8:45 am]
BILLING CODE 4210-32-M

federal register

Monday
October 19, 1987

Part VI

Legal Services Corporation

45 CFR Part 1607

Requirements for Recipient Governing Bodies; Proposed Regulation

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Proposed regulation.

SUMMARY: This proposed rule amends Part 1607 of the Legal Services Coporation regulations prescribing the requirements for recipient governing bodies. The amendments and additions will provide new guidelines for the selection, composition, and procedure of such governing bodies. The section on compensation has been changed to better conform with the language in the Act. In addition, the size of the membership and the length of active membership of any board member are proposed to be limited.

DATE: Comments on proposed regulations must be submitted on or before November 18, 1987.

ADDRESS: Comments should be mailed to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751, (202) 863–1823.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751, (202) 863–1823.

SUPPLEMENTARY INFORMATION: Section 1007(c) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996(f) *et seq.*, establishes the procedural requirements for the governing body of any recipient that receives funding for the purpose of providing legal assistance to eligible clients. Among other things, it requires that at least sixty (60) percent of the governing body of a recipient consist of attorneys who are members of the bar in the state where legal assistance is to be provided. Part 1607, which implements these statutory provisions, has been revised two times since its original promulgation on July 23, 1976, with the consistent objective of insuring that programs will be accountable to the communities that they serve.

Part 1607 originally allowed for selection of attorney board members by several groups, including bar associations, law schools and anti-poverty organizations. Also, it required that only one member of the Board be an eligible client. 41 FR 25900 (1976). On July 28, 1978, the rule was revised to implement 1977 amendments to sec. 1007(c). See Pub. L. 95–222 (1977). As amended, it required that at least one-third of the members of a recipient governing body be eligible clients to insure that the recipient would be accountable to the client communities it served. 43 FR 32772 (1978).

The next revision, which became effective on February 16, 1983, contained new mechanisms and requirements for selection of attorney members of recipient governing bodies as required by Pub. L. 97–377, the LSC appropriations bill for that year. 48 FR 1971 (1983). The provision in the LSC appropriations bill commonly referred to as the McCollum Amendment required that the appointment of the attorney members of the governing body of a recipient be conducted so that a majority of the board be selected by the governing bodies of the state, county or municipal bar associations, the membership of which represented the majority of attorneys practicing law in the recipient's service area. All subsequent appropriations bills have retained this provision.

Finally, on August 15, 1983, a final Guideline, No. 83–1, was published after notice and comment as an authoritative interpretation of the regulation as amended. 48 FR 36820 (1983). Briefly, the Guideline establishes that the general membership bar association that is co-extensive with the recipient's service area is to be the appointing bar. The proposed revision would require that the state bar for the state in which the recipient maintains its principal offices, whether or not it is co-extensive with the recipient's area, be the appointing body. To the extent that the changes proposed here are inconsistent with Guideline 83–1, conforming modifications are proposed to be made to the Guideline simultaneously.

The current proposed revisions and amendments to Part 1607 have been constructed to more fully conform to the Act, to better implement Congressional intent, and to insure that recipient governing bodies more closely reflect the structure and procedures which pertain to LSC's own governing body. See 42 U.S.C. 2996(c), 1004.

Section 1607.3 Composition

The proposed change to § 1607.3(c) concerns the appointment of attorneys to governing bodies. It is proposed that attorney board members must be appointed by a nine member legal services selection committee established by the governing body of the state bar association of the state in which the recipient is located. Selection of the nine member committee shall be conducted by an election in which all the voting members of the appointing bar are allowed to participate. The members of the legal services committee, who must be members of the relevant bar, shall sit for no more than a period of three years. The object of this change is to foster consideration and appointment of board members by the broadest possible representation of bar members.

Experience under the Act and the prior versions of Part 1607 taught that often only narrow segments of local bars were consulted in forming recipient boards. As a result, Representative William McCollum initiated an amendment, first articulated in 1981 in H.R. 3480 and later enacted in the appropriations bills for 1983, see Pub. L. 97–276 and Pub. L. 97–377, that was intended to require that the sole authority to appoint the majority of recipient board members be exercised by the governing body of either the state, county, or municipal bar association. The main purpose of the provision was to prevent self-selecting and self-perpetuating recipient governing bodies. See 127 CONG. REC. H 12550 (daily ed. June 16, 1981).

The language of the McCollum Amendment gives LSC discretion to grant appointing authority to either the state, county or municipal bar as long as the membership of that bar represents a majority of attorneys practicing law in the recipient's service area. Exercising this discretion, LSC requires in Guideline 83–1 that the local general membership bar association that is co-extensive with the recipient's service area be the appointing bar. Problems have been encountered in the administration of this requirement, however. Recipients' service areas often subsume several county or municipal boundaries; in such cases, the interested local bars are counseled to coordinate appointments. Yet uncertainty as to the identity of the majority bar or shared authority among responsible bars often has led to an absence of interest by the bar and, consequently, inattention and indifference towards the appointment process. Recipients have also been known to forum shop among local bars for the most favorable appointment process. In addition, local bars often accept and adopt recommended nominations furnished by the programs themselves. Such self-selection defeats the long-standing objective of active independent attention by the bar itself. The revisions are carefully constructed to avoid such problems. First, selection of appointees by an elected committee will assure substantial participation by a broad spectrum of the bar membership. Second, selection at the State level will eliminate the uncertainty as to the responsible appointing bar.

National support centers serve recipients nationwide. Because it would be unrepresentative of areas served to have just one State's bar be the appointing organization, and unduly cumbersome to have attorney members appointed by bar associations of several States, it is proposed that the appointment of attorney members of the governing bodies of national support centers be conducted by the governing body of the voluntary bar association having the largest membership in the United States.

The present paragraph (h) is proposed to be deleted as inconsistent with the proposed selection procedure outlined in paragraph (c).

A new paragraph (h) is proposed as an addition to § 1607.3 to limit the number of board members of any one political party that may serve at one time on a recipient's governing body. Pursuant to this section, no more than sixty percent of a recipient's governing body may be members of the same political party. This proposal would reinforce the breadth of representation appropriate for governing bodies. It would also reduce the potential for partisan political interference as was intended by Congress when it included the provision in the Act mandating a bipartisan board for the Corporation. See 42 U.S.C. 1004(a); S. Rep. No. 495, 93d Cong., 1st Sess. 9 (1973). Although legislative initiatives to establish this requirement have been entertained but not adopted, see 129 CONG. REC. S. 14443–14449 (daily ed. Oct. 21, 1983), 129 CONG. REC. H. 9587–9589 (daily ed. Nov. 9, 1983), the explicit purpose of the McCollum Amendment is to insure that recipients remain free from political influence, see 127 CONG. REC. 12550 (1981).

Paragraph (i) is proposed as an addition to § 1607.3 in order to limit the length of consecutive terms that a member of a recipient governing body can serve on that body. This proposed amendment prohibits a board member from serving more than a total of six consecutive years and requires a minimum three year absence from board membership before being eligible for reappointment to the same body. By requiring bar associations to appoint board members, Congress intended to prevent self-selecting, self-perpetuating recipient boards. See 127 CONG. REC. 12550 (1981). The bar was considered to be an objective, independent entity that would help insure that recipients remain free from political influence and deliver quality legal services to the poor. Congressional intent is defeated if board members are permitted to serve for unlimited terms with the result that the opportunity to appoint other bar members is constrained. Fixed terms also allow more attorneys in the recipient's area to participate over the years, thus increasing the legal community's involvement with and appreciation of the need for legal services.

Paragraph (j) is proposed as an addition to § 1607.3 to limit the number of voting members of a recipient's governing body to nineteen, absent a waiver obtained through a showing made in accordance with the requirements contained in § 1607.5(b). This revision is intended to reduce the possibility of recipient governing bodies expanding over time, thus diluting the effectiveness and involvement of individual board members. LSC recipient governing bodies currently range in size from approximately fourteen to sixty-six. Governing bodies larger than nineteen tend to be too ponderous to be efficient decisionmakers for recipient organizations.

Paragraph (k) is proposed as an addition to § 1607.3 in order to establish regulations and standards for committees appointed by a recipient governing body. Such committees are permissible, and their actions and resolutions may be effective and binding on the full governing body, only if certain requirements are observed. Any action of a properly constituted committee of a recipient governing body must be ratified by the full governing body prior to its implementation. Alternatively, the actions and resolutions of such a committee may be binding upon the full governing body and the recipient if the committee's quorum is identical in number to that of the full governing body. The intent of this provision is to prevent a committee of a governing body, such as an executive committee, which was a quorum requirement less than that of the entire governing body yet has authority to bind the entire governing body and recipient, from exercising its authority so as to circumvent the quorum requirement of the full governing body.

Paragraph (l) is proposed as an addition to § 1607.3 so as to make the previous revisions and additions, specifically those contained in paragraphs (c), (h), (i), (j), and (k) of § 1607.3, effective as soon as feasible following the effective date of the proposed changes.

Section 1607.6 Compensation

Section 1607.6, is revised to make the language of this part conform to section 1007(c) of the Act in order to insure that no board member will receive compensation from any recipient. This change is proposed to avoid any confusion that may exist due to the inconsistency between the language in the Act and that in the regulation. The Act prohibits an attorney from serving on a board if he receives compensation from "a", meaning "any", recipient. The regulation's language prohibits the receipt of compensation from "the" recipient.

An Opinion dated October 8, 1987, by the Office of Monitoring, Audit and Compliance of LSC, interpreted the Corporation's policy as prohibiting a board member from receiving compensation from any recipient.

This clarification is intended to apply to full-time and part-time recipient staff members as well as to members of the private bar who are concurrently serving as recipient board members. Payment for normal travel expenses and other out-of-pocket expenses is not considered compensation within the meaning of this section.

Section 1607.7 Compliance

Proposed § 1607.7 outlines the necessary steps which must be taken if a recipient governing body fails to comply with the revisions and additions herein proposed for Part 1607. Paragraph (a)(1) through (5) of § 1607.7 deals with specific information which must be included in the non-compliance report.

List of Subjects in 45 CFR Part 1607

Legal services, Governing bodies of recipients.

PART 1607—GOVERNING BODIES

For reasons set out in the Preamble, it is proposed that 45 CFR Part 1607 be amended as follows:

1. The authority citation for Part 1607 is revised to read as follows:

Authority: Sec. 1007(c), 42 U.S.C. 2996f; Pub. L. 99–591, 100 Stat. 3341; Pub. L. 99–180, 99 Stat. 1165.

2. Section 1607.3 (c) and (h) are revised and paragraphs (i) through (l) are added to read as follows:

§ 1607.3 Composition.

* * * * *

(c) Appointment of the attorney members of the governing body shall be conducted by a nine member legal services selection committee established by the governing body of the integrated state bar association of the State in which the recipient is located. In a State which has no integrated bar, appointment shall be made by a nine member legal services selection

committee established by the governing body of the voluntary bar association having the largest membership in that State. Appointment of the attorney members of the governing body of national support centers shall be conducted by a nine member legal services selection committee established by the governing body of the voluntary bar association having the largest membership in the United States. Selection of the nine member committee shall be conducted by an election held by the appointing bar's governing body in which all voting members of the appointing bar are allowed to participate. The elected committee members, who shall be members of the relevant bar association shall sit for a term of no more than three years.

* * * * *

(h) No more than sixty percent of a recipient governing body may be members of the same political party. In the case of unaffiliated status or independent party status on the part of certain board members, the sixty percent maximum of this subpart shall apply only to those board members who claim party affiliation. Party affiliation shall be determined by voter registration in States where voters register by party. In other States, party affiliation shall be determined by participation in the most recent party primary, as reflected by the official voter participation roll.

(i) No board member of a recipient governing body shall serve more than six consecutive years. Board members who have served more than six consecutive years on a particular recipient's governing body shall be absent from that recipient's governing body for a minimum of three years before being eligible for reselection.

(j) No recipient's governing body shall have more than nineteen voting board members, except as otherwise authorized according to the provisions contained in § 1607.5(b).

(k) The governing body of a recipient may establish such committees of board members as are necessary for the handling of specific matters as required by the Act or as are determined, by the governing body as a whole, to be required for the most efficient oversight and administration of the recipient. The actions and resolutions of such committees shall not be binding upon the governing body as a whole, or upon the officers and staff members of the recipient, unless ratified prior to implementation by the full governing body, or unless—

(1) Such committee's quorum is identical in number to that of the full governing body, and

(2) The membership of such committees maintains and reflects the proportions regarding attorneys, eligible clients, and political affiliation specified by the Act and other sections of Part 1607.

(l) The provisions contained in paragraphs (c), (h), (i), (j) and (k) of § 1607.3 shall be implemented by recipient governing bodies as soon as is practicable after the effective date of the revisions of Part 1607 contained herein. In no event shall compliance with the provisions of the aforementioned sections be achieved later than September 30, 1988, unless so authorized in advance by a waiver obtained in accordance with the terms of § 1607.5. No such waiver shall delay compliance with the provisions of the aforementioned subparts beyond December 31, 1988.

3. Section 1607.6 is revised to read as follows:

§ 1607.6 Compensation.

While serving on the governing body of a recipient, no board member shall receive compensation from any recipient of the Corporation, whether such compensation is termed salary, per diem, or otherwise. A board member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of board membership.

4. Section 1607.7 is revised to read as follows:

§ 1607.7 Compliance.

A recipient whose governing body does not satisfy the requirements of this part, as of the effective date of this rule, shall submit a report to the Corporation's Compliance Division no later than thirty days after such effective date. Such report shall include:

(a) The current composition of the recipient's governing body, identifying each board member by name, appointing body, political affiliation, and length of service on such governing body

(b) A listing of the recipient's current governing body committees, which listing shall specify the identity of such committee's membership as well as the recipient's quorum requirements;

(c) A listing of the date upon which the terms of each current board member of the recipient's governing body will expire;

(d) A listing of board members who have received compensation from other Corporation recipients during their service as board members on the recipient's governing body, together with:

(1) The identity of other Corporation recipients which have provided compensation to the board member in question; and

(2) The amount of any such compensation;

(3) A description as to the nature of the compensation (whether salary, per diem, etc.) and the justification for payment;

(a) A statement specifying the date by which the provisions contained in 45 CFR 1607.3 will be met. In the case of anticipated non-compliance, such statement shall specify that an application for waiver, in accordance with the provisions contained in § 1607.5, will be submitted by the recipient. The statement must state the reasons why such a waiver is warranted and why compliance with the provisions of Part 1607 without such a waiver would be unduly burdensome or impossible for the recipient to achieve.

Dated: October 15, 1987.

Timothy B. Shea,

General Counsel.

[FR Doc. 87-24271 Filed 10-16-87; 9:32 am]

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S.J. Res. 110/Pub. L. 100–129

To designate October 16, 1987, as "World Food Day." (Oct. 14, 1987; 101 Stat. 802; 2 pages) Price: $1.00

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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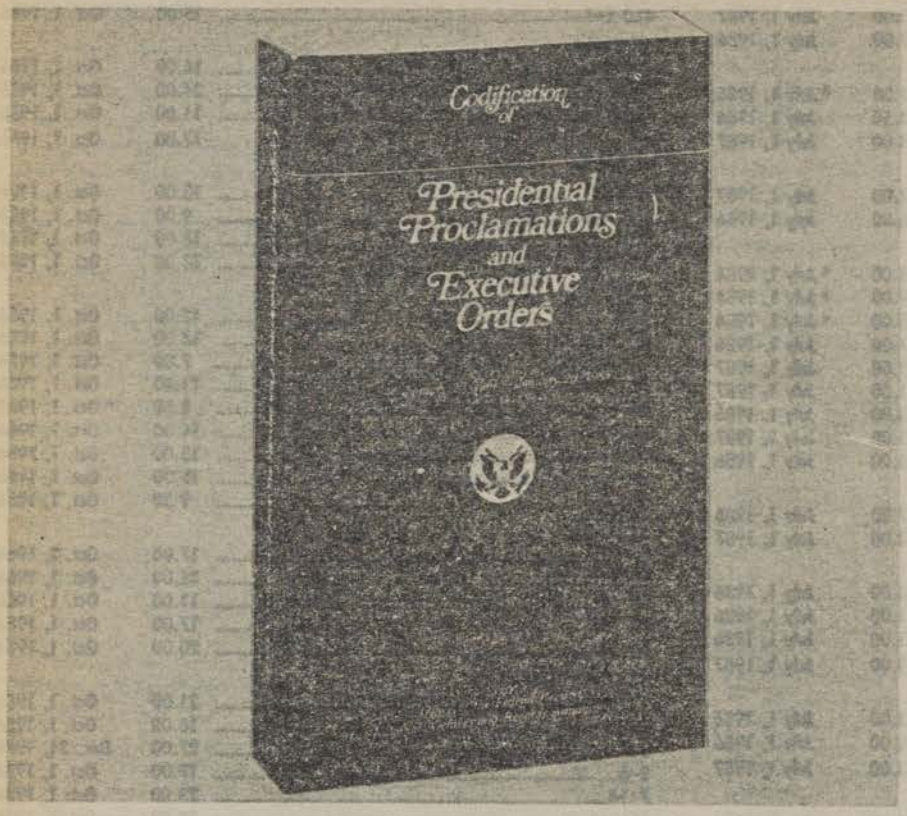

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